PRESERVED

App. F. IX-4

1932. (Cs-)

File No. 21-32

Serial Nos. 1-2

Previous References
CS 82-03-1-16
" 45-29-8,9 & 10(a)

Later References.
CS 124-37 (1-2)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 2 W O -

Part B for Mysore

SUBJECT.

Re- the execution of the warrant issued by the I Class Magistrate of Gadag against - Panch Gurm Shanta Sastri, in a case of alleged defamat

2) 2

The Residency

W O - Pol 162 of 9. 8. 34

WD 01965--GPB--15,000--7-7-34

States that the Mysore Govt: see no reason to revise their views & points out - the inadvisibility of demanding the presence of the Officer in the present case.

Dr. Abdul Aziz
14 A 34.

G. R. S. APP. F. III—1] 193

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No.

FILE HEADING.

FROM

No. Dated Received

Diary No. | Enclos. | Spare copies | Serial No.

BRIEF ABSTRACT OF LETTER

NOTES AND ORDERS.

Mr B M. may kindly deal with this
18/7/32

Received from moorthy, Pandit
22/7

Submitted for orders with connected papers
18/7

The facts of the case are shortly as follows:-

One Pundit Gurushanta Sastri, who is the Editor and publisher of a newspaper called "Panchacharya Prabha" in Mysore appears to have published in his paper certain matter alleged to be defamatory of one Basappa Veerappa residing at

NOTES—First Sheet

Gadag in British India. The newspaper having subscribers at Gadag is sent to them by post from Mysore. Basappa Veerappa laid a complaint under Section 500, Indian Penal Code, before the First Class Magistrate at Gadag who issued a summons in the first instance through the District Magistrate, Mysore. The accused it is reported, refused to receive the summons and then a warrant was issued through the same channel but it was returned as the accused could not be found at Mysore.

The complainant then moved the Court at Gadag for a proclamation under Section 87 of the Criminal procedure Code. At this stage, however, the accused appeared through a pleader and raised the question of the jurisdiction of the Court to take cognisance of the complaint in as much as the accused was a subject of Mysore and was not in British India when the alleged offence was committed at Gadag. After hearing the arguments, the Gadag Magistrate held that he had jurisdiction to try the case since the offence was one committed in British India. The pleader for the accused then asked for process to issue through the Political Agent of Mysore and accordingly a bailable warrant issued by the Court was received with the Residency letter of 7th February 1930.

2. The question regarding the jurisdiction of the Gadag Magistrate was considered by the then Legal Remembrancer (Mr. P. Mahadevayya) and he opined that the Magistrate was wrong in claiming

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jurisdiction to try the ~~same~~ case. A reply was accordingly sent to the Residency on 15th March 1930, wherein the circumstances that led to the passing of the Chief Commissioner's Notification of 23rd July 1878 were adverted to, in order to show that it was intended to apply only to cases where, at the time of the commission of the offence, the offender was in British India and thereafter ~~fore~~ re-entered the Mysore State. It was pointed out in para 10 of the letter that the Gadag Magistrate had completely overlooked the important point that he can have jurisdiction over a foreigner in respect of an alleged offence, only when such person was present in British Territory at the time of the commission of the alleged offence. In support of this, a previous decision of the same Magistrate of Gadag, declining jurisdiction in the case against the 'Mysore Star' was cited.

(3) The Residency in their letter of 8th July 1932 (P.U.D.) controvert the position taken up in Mr. Malgadevayya's letter of 15th March 1930 above mentioned. It is pointed out on the authority of Mr. Moss King's letter No.1958, dated 24th March 1906 that the Chief Commissioner's Notification of 1878, having the force of law, must be interpreted as any other legal enactment is interpreted and that therefore the clear terms of the notification cannot be restricted in an way, by a consideration of the circumstances under which it was issued. Criminal processes of every kind, it is urged, if they relate to offences punishable in British India, have to be executed in Mysore

NOTE—Contn. Sheet.

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whether the offence was an extraditable one or not. As to whether in this particular case the offence is one punishable in British India, the Residency say that since the newspaper containing the libel was published in Gadag, the Magistrate there has jurisdiction to try the offence. The previous decision of the same Magistrate, cited in our letter of 15th March, is easily disposed of, as being incorrect. On these grounds, a reconsideration of the question is asked for.

4. The legal argument on which the issue of the warrant can be questioned is that which is pointed out in Mr. Mahadevayya's note of 12th February 1930, viz., that under the Chief Commissioner's Notification the process can be issued only if the British Indian Magistrate has jurisdiction to try the offence and that in the case of a foreigner, such Magistrate has no jurisdiction, if at the time of commission of the offence, he was not in British India. In coming to this conclusion reliance was mainly placed on the observations made in Ratanlal's Law of Crimes, 11th Edition, page 32, and similar observations in Mayne's Criminal Law, 3rd Edition page 293. The statement in Ratanlal is as follows:-

"It is only for acts done when the person doing them is within the territory over which the authority of the British Law extends, that a subject of a Foreign State owes obedience to that law and can be made amenable to its jurisdiction. Thus, when it is sought to punish a person who is not a British subject, as an offender in respect of a certain act, the question is not "Where was

These observations do not find a place in the 4th ed^n of Mayne's book.
BNP

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the act committed" but "was the person, at the time when the act was done, within the territory of British India"; for, if he was not, the act is not an offence; the doer of it is not liable to be punished as an offender and he is therefore not subject to the jurisdiction of the criminal courts."

(5) The authority for the above proposition is the decision of the Punjab Chief Court, by Mr. Justice Plowden, given in the year 1878, where he held that the subject of a Native State is not liable to be punished under the Penal Code by a Court in British India for acts committed in British India, he being at the time of such commission, in foreign territory, even if he afterwards be in British India (Vide footnote in Ratanlal).

The Punjab decision itself is based on the famous case of R. Vs. Keyn, otherwise known as the Franconia case - a case which was decided only two years before the Punjab decision. In particular, the statement that "It is only for acts done when the person doing them is within the territory over which the British Law extends that a subject of a foreign State owes obedience to that law and can be made amenable to its jurisdiction," is the statement of Chief Justice Cockburn in the Franconia case reported in (1876) 2 Ex. Div. at page 119.

In the opinion of Lord Chief Justice Cockburn and the other Judges who agreed with him in this view, "jurisdiction only exists where there is pro-

OTE—Contn. Sheet.

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protection and allegiance, and allegiance only arises, in the case of a foreigner, where he comes within the jurisdiction." (Vide (1925) B.Y.B.I.L. Page 52)

6. The judgment of the majority of the Court in R. Vs. Keyn possesses an authority far greater than that possessed by most decisions of any English Court, inferior to the House of Lords, by reason of the elaborateness of the argument, the lengthy consideration given by the Court to their judgments and the number of judges taking part in the decision.

Nevertheless, on this particular point, whether in order to create jurisdiction over a foreigner in respect of a criminal offence, it is necessary not only that the offence should be committed within the jurisdiction but also that the accused should himself have been within the jurisdiction at the time, there are several facts which detract from the authority which the judgment possesses on the other points in the case. No authority for the proposition is given. Not a single case is quoted where any English Court has held that it had no jurisdiction in respect of an offence committed in England by a foreigner on the ground that the accused was not in England at the time. The only case on the point which the Lord Chief Justice quotes is an American case (Adams Vs The People) which, as he says, is an authority to the contrary. In that case a fraud had been committed at New York by the defendant, a citizen of the State of Ohio and residing in it, through an agent at New York who was wholly innocent and ignorent of the fraud. The accused

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set up as a defence that he was a citizen of another State and residing in it when the alleged offence was committed and therefore not subject to the law of New York. But the objection was overruled on the ground that a criminal act done through the instrument of an innocent agent is in law the act of the principal, who may, therefore, be held to have committed the offence in the State in which the act was done and being found in that State, will be liable to be there tried and punished.

(2) Moverover, since the date of R. Vs. Keyn, decisions have been given by English Courts; which are rather inconsistent with the doctrine. In 1908, Justice Phillimore convicted a foreigner under Section 44 of the Larceny Act, of demanding money with menaces. The defendant was in Hungary at the time and gave letters containing the menaces to an agent there, who posted them in Russia, and they were received in London. (See R. Vs. Veltheim cited in Russeel on Crimes, page 55).

In R. Vs. Nillins, a case which was decided by three judges of the Queen's Bench in 1884, Nillins being in Southampton worked and sent to Germany letters alleged to contain false pretences and addressed to persons carrying on business in Germany and thereby induced them to deliver goods to his order to persons in Hamburg. Nillins also sent to persons in Germany cheques alleged to be forged. An application was made for his extradition to Germany in respect of the false pretences and forgery. On proceedings for

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habeas Corpus to prevent extradition, it was argued for the Crown that there was ample evidence of an offence committed in Germany and that Nillins, though residing in England at the time the offence was committed, fell within the definition of "fugitive criminal" in the Extradition Act, 1870, ~~Xxxxxxxx~~ Section 26. Cave J. said "It is clear that there may be cases where a person has committed a crime in a foreign country without ever being there." This decision though questioned in Clerk on Extradition, has been recently followed with approval in Rex. Vs. Godfrey reported in (1923) I K.B.24. In the words of Lord Chief Justice Hewart, "it does not seem to be necessary to the idea of fugitiveness, that the alleged criminal should have been resident in the country where the crime was committed."

8) Russel at page 56 of his book on Crimes, states the law thus; "In the case of a crime committed through an innocent agent, e.g., where a messenger is sent to cash a forged cheque, or a packet containing poison, or where a letter containing false pretences or threats or a defamatory libel, is sent through the post, the person who employe the agent or the post office in aid of his criminal purpose is treated as the principal offender. Where the offence is committed in England, the principal offender is regarded as constructively ~~xx~~ present, where the cheque was altered or the poison or letter delivered, though he would apparently be equally triable by the Court having jurisdiction in respect of the place where the crime was set in motion."

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9. In India itself, the decision of the Bombay High Court in 36 Bombay, page ~~504~~ 524, shows that a foreigner who having started the train of his crime in foreign territory, perfects and completes his offence within British Limits, is triable by the British Indian court, if found within its jurisdiction.

In a recent case, reported in 1928 (All India Reporter, Sind, page 161) it has been held, following 36 Bombay, that "where a foreigner is charged with an offence under the Penal Code, it is immaterial whether the accused person is bodily present in British India where the offence was completed or whether his presence there is derived by process and intendment of law; in either case, he is present in British India, committing an offence under the Penal Code and that being so, his character as a foreigner cannot avail him."

10. Under these circumstances it appears to be rather difficult to contend that under the law, the Gadag Magistrate has no jurisdiction to try this case merely because at the time of publication, Mr. Sastry was not in British India. Once it is admitted that the Gadag Magistrate has jurisdiction to try the case, then under the Chief Commissioner's Notification of 1878, which has the force of law, the process issued by that Magistrate has to be executed in Mysore as if it had been issued by a Mysore Magistrate. This notification only provides a simpler procedure to get at the accused than the one provided for under the Extradition Acts.

11. The question, however, has a political aspect

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which eminently deserves further consideration. Here the circumstances that led up to the issue of the Chief Commissioner's Notification of 1878, have an important bearing. The Notification itself is no law for the British Indian Magistrates, and consequently does not prescribe when and under what circumstances such Magistrates can issue processes for execution in Mysore. The Notification only obliges the Mysore Police and Magistracy to execute the processes so issued. This cannot, however, prevent the Durbar from pointing out that in a specific case, such as the one under consideration, the British Indian Magistrate has contravened the terms - express or implied-of a political arrangement between Mysore and British India under which ~~above said~~ above such Magistrate is empowered to issue a process for execution within Mysore. For, neither the British Indian Criminal Procedure Code nor the Indian Extradition Act profess to deal with the matter of requisitions for the surrender of criminals who have fled from justice out of British India into a Native State. This is always regulated by a treaty or any other political arrangement. Now such an arrangement between Mysore and British India is contained in the correspondence that led to the issue of the Chief Commissioner's Notification of 1878 and not in the notification itself.

12) Now the letter of the Government of India No.84 Judicial, dated 25th June 1878, which led up to the issue of the Chief Commissioner's Notification clearly

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shows that what was contemplated was only the providing of a ~~similar~~ simple procedure for the surrender of persons who take refuge in Mysore after having committed an offence in British India. It is admitted in the letter that though exact reciprocity would not be attained by the arrangement, the slight advantage conferred on British Courts is only one of difference in procedure and therefore of no material consequence. In other words, Mysore had to proceed under the Indian Extradition Act when it wanted the surrender of an accused person in British India, while British Indian Magistrates could in similar cases issue a process direct for execution in Mysore. There was no idea of extending or otherwise interfering with the nature of the offences for which surrender could be claimed by both the parties. On the other hand in para 13 of the letter it is assumed that the list of offences specified in schedule II of ~~the~~ Act XI of 1872, which was the Extradition Act then in force, included all offences for which the extradition of criminals between different States was thought actually necessary.

(12) Now under Article 15 of the Mysore Treaty, Mysore has bound itself to surrender any person found within it who is accused of having committed an offence in British India and for whose arrest and surrender a demand is made by the British Resident in Mysore or some other officer authorised by him in this behalf. Though here no restriction is placed on the nature of the offence, for which surrender can be claimed, the

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policy of the Government of India, as laid down in G.O. No.219, Political, dated 12th April 1875 is that the demand to be made must be a "reasonable demand". As to what is a "Reasonable Demand", the Government of India state that it certainly includes the cases of all offences, mentioned in the Schedule to the Indian Extradition Act XV of 1903 and also those offences in respect of which the arrest and removal of criminals escaping into British India is allowed. And they add "that some cases outside of that catalogue may probably be added with propriety. Such instances, however would be exceptional and the requisition for surrender should not be made without the sanction of the Governor in Council, where the offence is not one of those mentioned in the schedule above cited."

(14.) Now defamation against a private individual is not only not included in Schedule I of Act XV of 1903, but has not been considered at any time or in any country to be an offence for which a surrender can be claimed; more so when that defamation is contained in a newspaper printed and published by a foreigner in his own country. Even the cases which have arisen after Reg. Vs. Keyn discussed above are all cases relating either to extraditable offences or to serious political offences and not to simple offences like an ordinary libel against a private individual published through the instrumentality of the post office.

15. The Residency in the P.U.D. state that where a lible is sent from one country to another, the

x (Vide Sohoni's Cr. P.C. 12th Ed. Addl. II. p. xxxi)

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the venue may be laid in either country. This is only true if both the countries are under the same Sovereign - otherwise, the venue is possible only in the country of the offender for anywhere else, he cannot be got at by any means, unless he happens to be there voluntarily.

(c) Defamation against a private individual, being neither an extraditable offence nor one in respect of which the demand can be said to be a reasonable demand as laid down by the Government of India, it must follow that a British Indian Magistrate, in issuing Criminal processes for the arrest of an accused in Mysore in order to try him for the offence of defamation said to be have been committed by him in British India, violates the principles laid down for his guidance by the Government of India to carry out the extradition arrangements made with Mysore and other States.

In this view, the Govemment of Mysore may again press upon the Residency the inadvisability of demanding the surrender of the offender in the present case and may perhaps have a reference made to the Government of India also. If, however, in spite of protest, surrender is claimed and the warrant issued, the due execution of the warrant cannot be legally resisted.

I regret for the delay involved in the preparation of this note. The matter being important required careful study.

26/8

Under Secy,
Prot^n Br,
For perusal & further action.

M Poresrao
26/8/32

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16) Pandit Gurushanta Sastry appeared by Advocate before the Legal Remembrancer, and argued that the warrant issued by the British Indian Magistrate can be executed in Mysore only if the Magistrate has jurisdiction to try the case, and that in the case of a foreigner it is only for acts done by him when he is within British territory that he can be made liable in British India. The Legal Remembrancer considered that there was much force in his contention and that it was supported by authority. Accordingly, the main legal position taken in our letter to the Residency was that the Gadag Magistrate can have jurisdiction over a Mysore subject in respect of an alleged offence only when such a person was present in British territory at the time of the commission of the alleged offence and that the Chief Commissioner's Notification of 1878 is intended to apply only to cases where the subjects of Mysore commit an offence in British territory and the re-enter Mysore and that if the offender was not in British India at the time of the commission of the offence and did not re-enter Mysore after committing the offence the notification of 1878 cannot apply.

17) These legal contentions are controverted in the Reply of the Residency (P.U.D.). Their argument is that since the offence of defamation was committed in Gadag by the publication of the defamatory matter thereat, the Magistrate of Gadag has jurisdiction and that the clear working of the Chief Commissioner's Notification requires criminal processes of whatsoever description from British India to be served in Mysore and that the

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the limitation as to the nature and scope of the Notification as proposed in our letter is not justified.

18 The Notification of 1878 is an extremely one-sided piece of law without any reservation as regards recriprocity and is also very wide in its language. The Residency in their letter rely upon the argument raised in Mr. Moss King's letter of 24th March 1906 wherein, in regard to a kindred matter, reliance was placed on the accepted maxim that the original intention of any legal provision cannot be adduced in interpretation or modification of its meaning when the letter is clear. Thus the wording of that notification, wide as it is, lends us no support.

19 The Gadag Magistrate can issue the warrant only if he has jurisdiction and for this the offence must be one committed and punishable in British India and this is conceded by the Residency. The offence of defamation consists in the publication of defamatory matter and it is committed wherever the matter is published. Where a libel is printed the disposal of each copy would constitute a distinct publication (1883 P.R. 12). Where a libel is posted in one place and received and opened in another, the offence of publication takes place and may be tried in the latter place (3. All. 342, 22 B. 129, 15 B. 286).

20 In the present case, since the defamatory matter was posted in Mysore and published in Gadag, the offence has been committed in Gadag also. The petitioner Mr. Gurushanta Sastry is the editor and publisher of the paper and it is he that posted the copies to his subscribers at Gadag. He cannot even contend that he had no intention that it should be published in Gadag.

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21) The next question for consideration is whether even though an offence is committed in British India, the Magistrate there will have no jurisdiction if the accused is a foreigner unless the accused ~~is specifically~~ was physically present in British India at the time of the commission of the offence. ~~The Privy Council has this view relying on a~~ This view is supported by two Punjab decision reported at 1878 P.R. 20, and 2 passages i Ratanlal's Law of Crimes, and Mayne's Criminal Law. The views in these authorities again were based on the dictum of Cockburn, C.J. in R Vs. Keyn. The dictum is "It is only for acts done when the person doing them is within th territory over which the British law extends that a subje of a foreign State owes obedience to that law and can be made amenable to that jurisdiction". This, according t Cockburn, C.J. is the common law of England. In regard to the point whether ~~the~~ in order to create jurisdiction over ~~for~~ a foreigner in respect of a crime it is necessary not only that the offence should be committed within the jurisdiction but also that the accused himself should have been within the jurisdiction at the time of the ~~commission of~~ commission of the offence, a number of decisions have held ~~a~~ contrary view. What is still more pertinent is that ~~the~~ extradition has been allowed even in cases where the accused was not present at the time of the commission of the offence in theState seeking surrender.

22) "For the purposes of criminal jurisdiction, an act may be regarded as done within English ~~territ~~ territory although the person who committed the act may be outside the territoryp for instance, a person who being abroad procures ~~acts as~~ an agent to ~~and~~ commit$ a crime in England is deemed

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to commit an act in England. If a person being outside England sends to England by post or otherwise with a criminal intent ~~or~~ a fraudulent ~~intention~~ document or a libellous or obscene publication, he commits an act in England for which he is amenable to English jurisdiction". Halsbury, Vol. 9, Page 272.

"In the case of ~~the~~ a crime committed through an innocent agent, for example, where a messenger is sent to cash a forged cheque, or a packet containing poison or where a letter containing false pretences or threats, or a defamatory libel is sent through the post, the person who employs the agent or the post office in aid of his criminal purpose is treated as the principal offender. Where the offence is committed in England or within the Admiralty jurisdiction, the principal offender is regarded as constructively present where the cheque was uttered, or the poison or letter delivered, though he would apparently be equally triable by the Court having jurisdiction in respect of the place where the crime was set in motion". Russell ~~Rose~~ on Crimes. Page 56.

In the case of R. Vs. Oliphant (1905,2 K.B. 67) ~~the~~ accused was employed by a firm carrying on business in London to manage the branch establishment in Paris. It was his daily duty to enter on slips an account of all sums received by him in Paris and transmit them in London in order that the amounts might be entered in a cash book kept in London. The defendant fraudulently appropriated three sums received by him in Paris and omitted to enter the receipt on slips sent to London. The defendant was indicted in England for falsification of accounts and convicted.

In R. Vs. Von Veltheim, the accused, an alien, was convicted in England of demanding money with menaces. He was in Hungary when he gave the letter containing the

menaces to an Agent for being posted and they were ~~xxxxx~~ posted in Russia and received in England.

In R. Vs. Nillins (53 L.J. M.C. 157) which is a very clear case directly on the point, the accused being in Southampton ~~xxxxxxxxx~~ wrote ~~worked~~ and sent to Germany letters alleged to contain false pretences and addressed to persons carrying on business in Germany and thereby induced them to deliver goods to his order to persons in Hamburg. He also sent to persons in Germany cheques alleged to be forged. An application was made for his extradition to Germany in respect of the false pretences and forgery. On proceedings for Habeas Corpus to prevent extradition it was ~~xxgued~~ held that extradition has to be allowed and Cave J. observed that there might be cases where a person has committed a crime in a foreign country without ever being there.

In R. Vs. Taylor, it was held that if a person in a foreign country set ~~for~~ persons in motion as agents for him to forge cheques ~~or prescribe by his procurement~~ in London this would be an uttering for which he might be convicted in England ~~any manner~~.

In 36 Bombay, 524, the accused who was a subject of the Cambay State sent an accomplice from Cambay to Umrath in British India to instigate a professional forgerer to forge a valuable security. In pursuance of his instigation, the forgery was committed in Umrath. It was held by Justice Batchelor of the Bombay High Court as follows:-- "It seems to ~~xxx~~ me to be immaterial

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whether the accused person was bodily present in British territory when the offence was completed or whether his presence there and then is derived by process and intendment of the law; in either case, he is present in British territory commiting an offence under the Indian Penal Code, and that being so, his character as a foreigner cannot avail him..... This and the other authorities cited seem to me to establish the proposition that where a foreigner in foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed". (Vide also 1928 A.I.R. Sind 161).

Even under the English Extradition Act, the physical presence of the offender in the territory where the offence is committed is not necessary. All that it requires is that an offence must have been committed in the State seeking surrender. Fugitive does not necessarily mean one who commits an offence in one territory and enters another territory. The term "fugitive criminal" has been defined as meaning any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State who is or is suspected of being in some part of His Majesty's dominions.

A person may by his act bring himself within the territorial laws of two countries being actually present in one and constructively present in another. Both countries have territorial jurisdiction over him and as in the case of Nillins, the country in which he is constructively present may demand his extradition from the other. [Piggot's Extradition - Page 71.] in the opinion of 'fugitive criminal'

The words are "who is" in this country and not "who has fled to this country".

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Hewart

In a recent case (1923 K.B. 24. Vol. 1) Lord ~~Avery~~ has very clearly expounded this position of law. In that case, the applicant was charged with obtaining goods by false pretences in Switzerland, the false pretences being alleged to be made in that country by a partner at the procuration in this country of the applicant. The latter was not physically in Siwtzerland at the time when the pretences were made nor had he been there since. He was arrested in England to be surrendered to Switzerland for trial there. On his application for writ of Habeas Corpus, Lord Hewart observed as follows:--

> "For my own part, I cannot help thinking that some confusion has arisen from the ~~use~~ of the word "fugitive". At the first blush, it might appear that when a man is spoken of as a fugitive, what is meant is that he has fled from one country to another country. But is that notion in the least degree necessary? Suppose that a person had gone to another country and because he had committed a crime there, had fled to this country. He would in that case, be fleeing from the consequences in that other country, of what he had done there, and he would clearly be a fugitive criminal. But it seems to me that those words are equally satisfied whether the man has physically been present in that other country or not, if he committed the crime there. In the one case, as in the other, he is seeking to escape the penal consequences of his act. It does not seem to me to be necessary to the idea of fugitiveness that the alleged criminal should have been resident in the country where the crime was committed."

The Indian Extradition Act, Sections 3, 7 and 9 also do not prescribeas a condition for extradition that the accused should have been present in the territory where the offence has been committed and escaped into the State from which extradition is sought. Section 3 refers to a requisition by a foreign State for surrander of a fugitive criminal who is in British India. Section

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Section 7 runs thus:--

"Where an extradition offence has been committed ..... by a person ..... in the territories of any State not being a foreign State and such person escapes into or is in British India....."

The alternative words "or is" show significantly that the idea of "fleeing & reentering" is not a necessary circumstance for extradition.

Section 9 refers to requisitions by States not being foreign States. The essential ingredient in all these Sections is that the person who surrenders is sought by a State must be accused of having committed an offence in the territory of the State. For the commission of an offence physical presence is not necessary as in the case of abetment or by posting libellous and fraudulent letters. Even the correspondence leading to the Notification of 1878 does not take this restrictive view of the term "fugitive". The first portion is as follows:--

> Further under Section 9, any British subject, European or Indian who commits an offence in Mysore and then enters British India may be tried in British India as if the offence had been committed there if the Chief Commissioner certifies that the charge is one which ought to be enquired into in British India.

This refers to the trial of British subjects re-entering British India after committing offences in Mysore and corresponds with the procedure prescribed in Section 188 of the present Criminal Procedure Code. The next portion is as follows:--

> And as the Chief Commissioner is administering the executive Government of a foreign State, he may apply to the British Government under Section 14 of the Act for the surrender of any person whether a British subject or not who is accused of having committed an offence in Mysore.

This shows that if a person in British India is accused of having committed an offence in Mysore, a requisition may be made for his surrender.

Considering the trend of the law, it seems possible that if we ask for surrender of a British Indian subject who by his acts commits an offence in Mysore

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but who was not present in Mysore at the time of the commission of the offence, surrender will be allowed if the offence is one in the schedule to the Extradition Act. Take for example, abetment of murder. A person can abet or incite without coming into the territory. There seems to be nothing against principles of nationality or sovereignty if extradition is allowed in such cases. But the correspondence leading to the Chief Commissioner's Notification does not show that British India will refuse to surrender to Mysore if a person resident in British India is accused of an offence in Mysore though not actually present in Mysore at the time of the commission of the offence.

25) The Mysore Treaty also does not support the view that for surrender the accused must have been present in British India when the offence was committed. Art. 15 is as follows:--

> The Maharaja of Mysore shall cause to be arrested and surrendered to the proper officers of the British Government any person within the State territory accused of having committed an offence in British India for whose arrest and surrender a demand may be made by the British Resident in Mysore or some other officer authorised by him in this behalf.

26) It is quite general that the only conditions are that the accused must have committed an offence in British India and he must be in Mysore.

27 The next question is whether so far as we are concerned the position is altered in any way in view of th fact that defamation is not an offence extraditable under

WD 70—GBPM—60,000—13-8-31.

the Extradition Act. So far as the surrender of ~~the~~ accused to British India from Mysore is concerned, we do not seem to examine the nature of the offence. We do not seem to have raised the objection that if a particular offence for which surrender is asked for, is not an extraditable offence, ~~and the~~ fact ~~of~~ warrants for the arrest of ~~the~~ accused in Mysore does not come to Government at all but ~~will be~~ are served directly in accordance with the Chief Commissioner's Notification. In view of the very wide wording of the Notification, there is not much support for such a contention. Prior to that notification, all warrants in respect of all offences committed in certain districts of Madras were being executed in Mysore as if issued by a Mysore Court and then extended in respect of warrants for all courts in British India by the Chief Commissioner's Notification. Even in regard to the interpretation of the nature of the warrants executable in Mysore the Residency in their letter of 1906 would not concede any limitation or restriction in respect of the Chief Commissioner's Notification, though for such restrictions there was good reason to urge since prior to 1887 only personal warrants were being freely executed. To limit therefore the Notification of 1878 to extradition offences only, there is hardly any chance of acceptance by the Government of India.

(3) There does not seem to be much use in pursuing the matter further. The entire ~~thing~~ difficulty consists in the fact that the Notification of 1878 is very one-sided and very widely worded.

Chief Secretary)

CE 4/10/32

(4) I agree. For orders

Second Member) 19/10/32

CE 19/10/32

OFFICE OF THE ... DECCAN ...
DEC 1932
No. 3082

Warrant against Pandit Jawaharlal Nehru etc. 24

General and Revenue Secretariat | File No. 21 of 1932. | [App. F. III—2

Serial No.

30) The above appears to be the legal position. But before sending a reply it might be desirable to consult the Chief Justice, if the Dewan approves

(~~Warrant against Pandit Jawaharlal Nehru etc~~)

by
21.10.32

DEWAN'S OFFICE
2370
24 OCT. 1932

(Dewan) 21/10/32

Dewan
21/10/32

Home Secretary
21/10/32

JM
25-10-32

31) I gave this file to the late chief justice as directed by Mr. Madhavarao. It has been sent back to me from his house after his death. He has not expressed his opinion.

(Chief Secretary) 27/12/32

NOTE—Contn. Sheet.

(linked file) 'N'

23rd) The opinion of the Chief Judge has been received. Apart from the legal position it is stated therein that the Trading Magistrate has struck off this case from the file, & that consequently the Warrant is not executable.

Mr. M. P. Bhojia Advocate for Jumnadas the Trader has filed an uncertified copy of the said order on 19.6.33 which shows that the Magte ordered the papers to be filed. That order seems to have been passed on 1.1.31. Neither the Residency nor we were aware of it (assuming that such an order has been passed). We may reply to the Residency that it is understood that the Magte has ordered that a warrant of arrest could not be issued & that the papers be filed & therefore the Warrant has become unexecutable & has to be dropped.

Chief Secretary) Ce 14/10/33

33) I agree. Please put up a draft according & submit to 1st Member. PMC 14/10/33.

RJ 19/10/33

XX PMC 19/10/33

24) Accept. See HD.

See Hdlr. 1st Member) Ce 21/10/33

Fi... 21 OCT. 1933 ... 302 ...

3834/33
P 26

App. F. XI—4]

CB File No.

Serial No.

Sus. Regr. No.

Shall a reminder issue to

The Chief Justice

for a reply to this Office No. , dated the

Do No 1946/CS of 20.12.

Subject.

Address required on 13-2-33.

Sending the Lists Settled for his perusal.

REMINDERS

No.	Date
4359	9-2-33

It is ascertained from the Courts Section, that their file about Estimate against Samishgumshanta Suit, has not been received back from the Chief Justice. May he be reminded in the matter?

(If agd, this will be transferred to Appeal Branch, for taking further action)

17/1/33.

(Appeal Branch)

Ce 17/1/33

Please see T.U.R. Sealed a reminder for orders

Ce 24/1

may be sent early in February

Ce 24/1/33

WD 02331—GPB—10,000—14-4-30

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. 542 Enclos. 3991/32
203-1923.

Dated Bangalore, 21st January 1933.

Pol. 988.

From

Captain G. Kirkbride, I.A.,
SECRETARY TO THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

Subject :—

Execution of warrant issued by the First Class Magistrate of Gadag against Pandit Gurushanta Sastry, Editor of "Panchacharya Prabha".

Sir,

I am directed to refer to this office letter No.4498, dated the 8th July, 1932, and subsequent reminders Nos.6535 and 7724, dated the 26th September and 16th November, respectively, on the above subject and to enquire when a reply may be expected.

I have the honour to be,
Sir,
Your most obedient servant,

for SECRETARY TO THE RESIDENT.

MVS

Serial No.

The file has been sent to the Chief Justice.
2 The Deputy Registrar's file is for orders.

26/1

May a reminder be sent to the Hon'ble Chief Justice to whom the file has been sent

Chief Secretary

Yes 30/1 6/1/33

NOTE—Contn. Sheet.

CHIEF SECRETARY
30 JAN. 1933

WD 70—GBPM—60,000—13-8-31.

4330

File No. of 193 . | General and Revenue Secretariat

Draft Secd.

Sec 2/2 Pol

Secy 33

Secd NO P 4339 of 9/2

D. O No 89 of 11/2 from the Chief Justice stating that an identical question has arisen on the Kuriani Sub-e and that the file will be fully examined & a reply sent early.

Secd. for perusal.

Sd MSK 17/2 (Chief Secty)

Secy

MM 24/2/33.

Secy

Reminder NO 783 & 9 10/3/33 from Resy.

I have felt I am not yet been receive back from the Chief Justice. The enquiry on the 11th July that the question was engaging his attention & a reply would be sent early.

Secd. for orders

Sd MSK 15/3/33

14/3.

Serial No.

May an interim reply be sent to the Residency that the matter is engaging the attention of Govt & a reply will be sent as early as possible?

Chief Secretary) 6/17/3/33

CHIEF SECRETARY
17 MAR. 1933

If as I believe, the case referred to has been disposed of, the C. J may be requested to return the Court file with his opinion

Secy
20/3/33

The case referred to has it is now understood been heard, but orders have not yet been pronounced.

Secy 20/3/33

Secretary. Will it be desirable to see MSK 30/3. Done 6 30/3/33

Issued no 5237 of 1/4 no 44 of 4/4 from the Chief Justice stating that the opinion would be forwarded after the Privy Council decision in the Mission case.

Secretary. Will it be desirable to see MSK 5/4, 6/4/33 and interim reply by Resy.

GENERAL SECTION
31 MAR. 1933
SECRETARIAT

NOTE—Contn. Sheet.

WD 0246—GPB—15,000—22-8-32

80 File No. warrant against Pandit Gurucharan Sahai of 193 . General and Revenue Secretariat

CHIEF SECRETARIAT. 6 APR. 1933

Chief Secretary) 6/4/33

MM 7/4/33

Issued P.O 1973 of 10/4

Letter of 19/6 from the British forwarding a copy of the order of the Court finding him guilty against Pandit Ramnarain & hence the warrant.

No 4585 of 22/6 from Secy to Resident - enquiring whether an appeal may be received.

The question whether the warrant sent by the British Indian Court against Pandit Gurucharan Sahai for an offence under S. 500 I.P.C should be executed in under correspondence with the Resy. & the file has been referred to the

Serial No.

to the Chief Justice for favour of remarks.

From the copy of the order of the Lordship which now sent up it is seen that the magistrate seems to think that the surrender of the warrantee could be secured only if the offence is an extraditable one. so he has accordingly ordered the filing of the papers. In view of this order it is perhaps no longer necessary to execute the warrant.

But it is not known if Chief Commissioner's notice No 111 of 23/7/1878 was brought to the notice of the magistrate.

Any how the general question involved in such surrenders is under discussion in the file which has been referred to the Chief Justice.

Send for orders if a reminder may be sent.

The order is dated 7-1-31 but the reference from the Registrar is of a later date.

NOTE—Contn. Sheet.

24/6/33

WD. 0246—SPB—15,000—22-8-32

3h (recention of warrant ~~[illegible]~~) Audit Punchanta Sastry's case

File No. of 193 . General and Revenue Secretariat

A draft DO letter to the Chief Justice to put up for orders

Chief Secy

MMP 24/6.

7/58

26/6(x)

MMP 26/6

Issued No P6614 of 2/6.

D.O No. 2/83-34

169 p 33.

BANGALORE

Dated 11th July 1933.

Dear Mr. Ranga Rao,

6619

Referring to your D.O. letter No. P. 6614 dated the 26th/27th June 1933, I write to state that since the opening of the High Court on the 5th June 1933, I was engaged in inspecting the courts in the Kolar and Chitaldrug Districts till 30th June 1933. The case referred to has not yet been disposed of and as it involves constitutional questions of great importance, it requires some time for decision.

Yours sincerely,

Mahadevappa

Rly 11/7/33.

Secy. for perusal and the connected file.

14/7

For perusal

DEPUTY SECRETARY 9. JUL. 1933

CHIEF SECRETARY 14 JULY 1933

Chief Secretary

Rly 19/7(3)

20/7/33

Rly 20/7/33.

19/7

General and Revenue Secretariat | File No. of 193 .

Serial No.

Secret. writes a despatch regarding
to the Resy.
5a
24/7. For personal despatch sign—
Chief Secretary) 25/7/33

RG
7/8/33 —

Issued vide Pol 134 dated 9/8—

TYPING SECTION
8. AUG. 1933
GENL. & REV. SECT.

5a
10/8/33

NOTE—Contn. Sheet.

✓ 2738/33 P 0 284 I—2

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. 10713. ~~Enclos.~~ Dated Bangalore, 18th Nov. 1933.

Pol. 567

FROM

Major G. Kirkbride, I.A.,

SECRETARY TO THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of

His Highness the Maharaja of Mysore.

Subject:—

Execution of warrant issued by the First Class Magistrate of Gadag against Pandit Gurushanta Sastry, Editor of "Panchacharya Prabha".

SIR,

CS 1795/33 ✓ 1987 P 1 24/11

I am directed to refer to my letter No. 9678, dated the 5th October 1933, on the subject mentioned above, and to enquire when a reply may be expected.

I have the honour to be,
Sir,
Your most obedient servant,

for SECRETARY TO THE RESIDENT.

ASB

15.

OFFICE OF THE COMMISSIONER OF POLICE
21 NOV 1933
No. 3933.

Sec 20/11 (First Member) 21/11/33

35) Please speak to me — as now the same or allied question is before High Court (re: Mr Venkatarangiengar's case)

by 23/11/33

24/11/33

NOTE—Contn. Sheet.

WD 0434—GPB—15,000—12-10-33

2736

File No. of 193 .

General and Revenue Secretariat

Serial No.

36) Submitted to the member in person. Was asked to put up a separate draft ~~so~~ so as not to give room to the impression that we accept the position as laid down in the Resy: letter of 8th July 1932, while at the same time intimating that the question as to the power of Br Indian magistrates to issue warrants for execution in mysore is for decision before the Full Bench of our High Ct in m. Venkataiangar's case, and that therefore a final reply in the matter can be sent only after such decision is given.

In this connection, the member enquired as to what had become of the proposal to move the Govt of India to revise the existing arrangement now existing in order that there might be reciprocity in this matter betn British India & mysore -

Has any letter to the Resy as indicated above issued or is such issue under consideration. If there are any papers, please let me see them in order to draft the reply as instructed.

2/1/34

37 Seen. ~~Seen~~ Put to the file. Initialled.

Sec 2/1/34

2/1/34

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

3730/33 P 37

No. 269 ~~Enclos.~~ Dated Bangalore, 8 January 1934.

Pol. 782

From III—2

Major G. Kirkbride, I.A.,
SECRETARY TO THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

Subject:—
Execution of warrant issued by the First Class Magistrate of Gadag against Pandit Gurushanta Sastry, Editor of "Panchacharya Prabha".

Sir,

I am directed to refer to my letter No.10713, dated the 18th November 1933, on the subject mentioned above, and to enquire when a reply may be expected.

I have the honour to be,
Sir,
Your most obedient servant,

4.1.34
for SECRETARY TO THE RESIDENT.

ASB/4.1.34.

38) A draft reply to the Resy: letter of 8th July 1932 is herewith put for approval. The fact that the question as regards the validity of warrants of arrest issued by Br Indian rights for execn in Mysore, is before a Full Bench of the High Court is mentioned in the draft, but this is not made a ground for ~~waiving~~ postponing the Securing of a final reply in the matter. Now that art 18 of the Treaty is abrogated, mention is made of the possibility of Govt undertaking legislation to regulate extradition proceedings

NOTE—Contn. Sheet.

WD 0434—GPB—15,000—12-10-33

37

3150

File No. of 193 .

General and Revenue Secretariat

Serial No.

It does not therefore seem necessary to labour much about the legal interpretation of the chief Comr's notn of 1878.

Submitted for orders. Refce orders of 23.11.33 (supra).

First member)

DRM
13/1/34

This is a very important matter. Please send it thro the Joint Chief Secretary.

Seen in the first instance
16/1/34

RG
16/1/34

DRM
16/1/34

I have gone over the file carefully & have also discussed the draft letter with the Asst Secy. I think it is suitable & may issue

16/1
30-1-34

Chief Secy)

DRM
30/1/34

Office of the First Member of Council
15 JAN 1934
No 537/

15 JAN 1934
No 440

CHIEF SECRETARY
31 JAN 1934

I have revised the draft on the lines discussed in person. The revised draft is typed & put up below.

under Secy) with comps

DRM
1/3/34

3730/34

38

General and Revenue Secretariat | File No. | of 193 . | [App. F. III—2

Serial No.

Chief Secretary) G 21/4/34

The chief secretary gave further directions regarding the work in the draft

G 26/4/34

4) Revised draft submitted

Chief Secretary) G 5/7/34

Joint member R2 28/7/34

4) approved. Please submit to Dewan by 2/8/34

OFFICE OF THE First Member BOARD 3 AUG. 1934 No. 9244

Dewan. R2 4/8/34 G 4/8/34

CHIEF SECRETARY'S 4 AUG. 1934

Dr. MAIN'S OFFICE 6 AUG. 1934 No. 701

M 6/8/34

R2 7/8

Dr Sec G 7/8

DRAFTING SECTION 4.45 P.M.

M 8/8/34

NOTE—Contn. Sheet.

WD 0434—GPB—15,000—12-10-33

39 M

File No. 21 of 1937

General and Revenue Secretariat

Serial No. 2

No Pol Nr 39/0 to Resy
I. Inclg Tour No Programme
Govt Sec no reasons to revise
their views of paragraphs
Nos mentioned in letter of
Govt. addressing their Government
to the opposite for the
Government Case.

B.
10.8.34

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. 4498
203/1928.

FROM

Captain G. Kirkbride, I.A.,
SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

Dated Bangalore, 8th July, *1932*.

Subject

SIR,

I am directed to refer to Mr. Mahadevayya's letter - No.Pol.1016/cts.45-29-10, dated the 15th March 1930, requesting the withdrawal of the warrant issued by the 1st Class Magistrate of Gadag against Pandit Gurushanta Sastry, Editor of "Panchacharya Prabha", a weekly newspaper printed and published in Mysore, in a case of alleged defamation, for the reasons explained at length in your letter.

2. The three main grounds which emerge from that letter on which the Mysore Government have based their objections to the execution of the warrant on the party concerned are briefly the following:-

(i) that, under the notification of the Chief Commissioner of Mysore No.111, dated the 23rd July, 1878 issued under the authority of the Government of India, the service of processes direct in one case (from British Indian Courts) and the application for extradition in the other case (from Mysore Courts) are both intended to apply to cases when the subjects of the State commit an offence in another territory and then re-enter their own State and that, if at the time of the commission of the offence, the offender was not in British India and did not re-enter Mysore after the commission of the offence the notification does not apply,

(ii)

4F 2

(ii) that as the accused a foreigner at the time of the alleged publication, is not stated to have been anywhere within the limits of the jurisdiction of the Gadag Court the Magistrate has no jurisdiction and

(iii) that in a similar case of defamation against another Mysore subject, the Editor of the "Mysore Star" published in Mysore the Gadag Magistrate had held that he had no jurisdiction to try the case on the ground that the accused was a subject of Mysore and was not present in British India when the offence was committed.

I am to observe, in regard to the first of these points, that the Government of Mysore have referred to the genesis of the Notification of the Chief Commissioner, No.111, dated the 23rd July, 1878 and the provisions of the Extradition Acts in force then and now in support of their contention. The limitation as to the nature and scope of the notification which the Mysore Government propose to infer from these does not in the opinion of the Hon'ble the Resident appear to be justified. I am to invite attention in this connection to the correspondence ending with Mr. Moss King's letter No.1958, dated the 24th March 1906. The question, it will be observed, has been fully discussed therein and the reasons put forward in arriving at the conclusions set out in Mr. Moss King's letter appear to hold good in the present case. It will be seen that the words "all criminal processes of whatsoever description" have always been interpreted as including criminal processes of every kind. The process, therefore, to ensure its execution in the Mysore State, needs only to relate to an offence punishable in British India and it need not necessarily be an extradition offence requiring the presence of the accused at the place of the commission of the offence and his escape thereafter. In the present case the offence with which Mr. Sastri is charged falls under sections 500, 501 and 502, Indian Penal Code. The offence of defamation is committed by publication of the defamatory matter. As the alleged defamatory matter is contained

in

in a newspaper, the offence is committed anywhere it is published, for example either at Gadag or in Mysore. Where a libel is sent from one country to another the venue may be laid in either country. The warrant in question, as it relates to an offence committed at Gadag, is a criminal process falling under the purview of the Notification of 1878 referred to already and the notification is in force now as it is preserved by Article 18 of the Treaty concluded by His Highness the Maharaja of Mysore.

3. In connection with the question of jurisdiction of the Gadag Magistrate, I am to state that, as already pointed out, as the publication of the alleged defamatory matter took place in Gadag, the offence falls within the jurisdiction of the Magistrate of the locality. Moreover, as the Magistrate is invested with 1st class powers under the Criminal Procedure Code it is intra vires for him to try the case.

4. In connection with the existence of a previous decision of the same Magistrate per contra, I am to say that without fuller information on the subject, it is difficult to express an opinion, but that, if the case was identical with the present one, it would appear, in view of the circumstances set out in the foregoing paragraphs, that the Magistrate's decision was incorrect. I am to request that the Government of Mysore will reconsider their view of the case, in the light of the above considerations and give instructions for the execution of the warrant. The Magistrate of Gadag will then be requested to issue a fresh warrant direct to the Magistrate concerned in Mysore.

5. I am to request the favour of a very early reply.

I have the honour to be,
Sir,
Your most obedient servant,

Captain,
SECRETARY TO THE RESIDENT.

MVS.

P. BHOGIAH, B.A., B.L.,
ADVOCATE
ಯಂ. ಪಿ. ಭೋಗಯ್ಯ, ಬಿ.ಎ., ಬಿ.ಎಲ್.,
ಅಡ್ವೋಕೇಟ್, ಮೈಸೂರು.

6568/32-5

MYSORE,

Date 19th June 19

To

The Chief Secretary, to the Government of Mysore,

BANGALORE.

Sir,

In connection with an application filed by me on 5-2- onbehalf of Pandit Gurusanthasastry, Mysore Palace Asthan Vidwan, Old Agrahar, Mysore City, against whom a case of defamation had b filed by one Basappa at Gadug, Dharwar District and a warrant of arrest had been issued through the British Resident, I beg to submit that in last application I showed in detail how the Subjects of Mysore St were unjustly arrested in Mysore State and surrendered to the - Criminal Courts of British India, whenever warrants of arrest were issued by these Courts against the Subjects of Mysore State for offences committed by them within Mysore State, and that after du consideration of my application, the warrant which had been issue against Pandit Gurusanthasastry was returned unserved by the Myso Government, for which act of Justice, I felt highly thankful.

I am now submitting for kind perusal a Copy of the Orde dated 7-1-1931 passed by the Magistrate of Gadug about Pandit - Gurusanthasastry which order clearly indicates how unjustly the warrant was issued against this Pandit.

Under these circumstances, I humbly request that the Benign Government will be graciously pleased to make arrangements once for all for preventing the repetition of such acts of injustice against the Subjects of Mysore State in future.

I beg to remain,
Sir,
Your most obedient Servant,

P. Bhogiah

copy of order passed by the Magistrate
Gadag on the application of Basavaraj
Bellary Gadag under §§ 500, 501 & 502
of I.P.C. dated 23/12-26

Below complaint lodged by Basappa Veerappa
Bellary.

Order.

It is alleged by the complainant that the
accused has committed offences under §§ 500,
501 and 502 of I.P.C. by publishing certain
defamatory matters in his Pancha-Charya-
Prabha-paper. It is admitted that the accused
is a resident of Mysore State. If so unless
the offences alleged to have been committed
by the accused falls under the extradition act-
~~His~~ Her all endence can not be secured, offences
under §§ 500, 501 and 502 of I.P.C. are not-
extradition offences and no warrant of
arrest - could be issued for ~~his~~ his surrender
to this court unless the complainant himself
arranges to secure his all endance by -
summons and this arrangement has already
been made by this court but the summons

has been returned unserved and even warrants contrary to law have been issued they too are returned un-executed. Whether the accused is or is not a British subject is a different question. The papers are therefore filed and the complainant is informed of the orders passed.

Gadag.
7-1-31

Sd/- M. M. Pathan
M. F. C.

TRUE COPY

Compared by L. Ramakrishnan Translator
Gadag.

by B. K. Neelagundkar of Ranebennur.
M. Gadag.

Copy applied for on 28/3/33 No. of Folios 180 E.
Copy ready on 16-5-33 Copying fee 0-6-0
Copy delivered on Comparing fee 0-1-6
Paper Examining fee 0-0-6
Total 0-8-0
0-0-9 Rounding off
0-5-3 Registering
0-14-0
0-2-0 Rd Stamps

8

20th December 1932.

D.O. no: 1946/CB
Enc: 2 files.

Dear Mr. Mahadevayya,

With reference to our conversation yesterday, I send herewith the following two files:--

(Recd back)

(1) Re-opening of the Special Magistrate's Court at Tarikere. (C. 97)

(2) Warrant against Pandit Gurushanta Sastry, (Cts.21 of 1932)

Yours sincerely,

RB
20/12/32

P. Mahadevayya, Esqr., B.A., B.L.,
Chief Justice, High Court of Mysore.

9

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the 193 .

Date of issue 9/12/33

Signed by J. M. Nair

List of enclosures .....

Copied by .....

9/12/33

Examined by .....

Section

File No.

Serial No.

No. D. O. No. P 4357

To The Chief Judicial Magistrate

Dear ——

I am directed ~~to acknowledge~~ to invite kind reference to your R. Ranga Rao's D. O. letter no 1946 dt 20-12-33 forwarding the petition 21 of 1932 for the execution of the warrant against Pandit Ramakanta Sastry and to request you to kindly let me know when the file may be expected back.

The Resy is urging for a reply in the matter

Yours Sincerely,

D.O.No.P/4359

8th February 33.

9

Dear Mr.Mahadevayya,

I am desired to invite kind reference to Mr. R. Ranga Rao's D.O. letter No.1946 dated 20th December 1932 forwarding the Courts File 21 of 1932 regarding the execution of the warrant against Pandit Gurushanta Sastry and to request you to kindly let me know when the file may be expected back.

The Residency is urging for a reply in the matter.

Yours sincerely,

To

P.Mahadevayya Esq., B.A., B.L.,
Chief Justice, High Court of Mysore,
Bangalore.

4350 1932

BANGALORE

Dated 11th February 1933

Dear Mr.Madhava Rao,

With reference to your D.O.of the 9th instant, regarding the Courts File No.21 of 1932, I write to state that the identical question has been raised in a certain case before the High Court on the revision side. It is said that the Magistrate of Tirupathi has issued an arrest warrant against Mr.Venkatarangiengar, Advocate, in connection with a case pending before the said Magistrate under the Motor Vehicles Act. A contention has been -- raised that in spite of the notification of 1878, the -- Tirupathi Magistrate is not legally competent to issue the warrant against a person who is beyond his jurisdiction -- on the ground that there is no statutory authority to -- enable the Magistrate to issue such a warrant.

The petition has been admitted and notice has been ordered to issue to the Government Advocate and the case will be posted for arguments in a few days.

The question raised in the Courts file is engaging my attention. It will be fully examined and a reply sent to you very early.

Yours sincerely,

Mmadhavarao

To

N.Madhava Rao, Esq, B.A., B.L.,

Chief Secretary to Government,

Bangalore.

5293
P 1932

D.O. No. 44
32.39

HIGH COURT OF MYSORE

BANGALORE

Dated 4th April 1933.

Dear Mr. Madhava Rao,

With reference to your D.O. No.P.5237 dated 1-4-1933 regarding Courts File 21 of 1932 I write to state that the question referred to in my reply of the 11th February -- 1933 is pending decision in the High Court and that my opinion will be given after the High -- Court gives a ruling on the question.

Yours Sincerely,

Madhavarao

To

N. Madhava Rao, Esq, B.A., B.L.,
Chief Secretary to Government,
Bangalore.

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

No. of letter replied to ..... D. O. No. P6614

To Dear Mr. Mahadevayya,

I am to refer you

to your D.O letter of 4th April

1933 regarding the return of the

Secretariat file dealing with the execution

~~Case to you~~ ~~for opinion~~ of the warrant against

Pandit Gourishanta Sastri, sent to you

for opinion. I am desired to enquire

whether the case referred to ~~in~~

in your letter has since been disposed

of by the High Court and if so when

the Secretariat file may be expected

back.

The Residency is urging

for a reply in the matter.

Yours sincerely

RR 26/6/33

24/6

General and Revenue Secretariat

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of issue 27.6.33

Mr R.R

Enclosures .....

By .....

Examined by .....

1748/1933 14

BANGALORE

Dated 12th October 1933

CONFIDENTIAL.

RR
13/10/33 -

Dear Mr. Ranga Rao,

In continuation of my reply dated 11th July 1933, I return herewith File No.71-32 -- regarding Pandit Gurushanta Sastry together with my legal opinion on the various points involved in the case. It will be seen therefrom that the demand of the Residency for the surrender of the Mysore subject is untenable from every point of view. It has moreover to be observed that the Magistrate of the British Indian Court has since passed final orders striking off the case on the ground that the warrant is illegal, and it is understood that the party concerned has -- filed no appeal or revision petition against the -- Magistrate's orders. Under these circumstances, the Magistrate must be deemed to be "functus officio" and the warrant has to be necessarily dropped since it has become unexecutable.

Yours sincerely,

Mahadevayya

To

R. Ranga Rao, Esq, B.A., B.L.,

Chief Secretary to the

Government of His Highness the Maharaja of Mysore,

B A N G A L O R E.

File No.71-32 regarding Pandit Gurushanta Sastry.

I have carefully examined the Residency letter No.4498/203/1928 dated 8th July 1932 regarding the warrant issued by the Magistrate of Gadag in British India against Pandit Gurushanta Sastry. The Residency has sent this communication for re-consideration after nearly two years and four months, and the grounds urged by them do not at all appear to be convincing in my opinion.

I (a) In the first place, I have got a few observations to make regarding the Secretariat note on the subject. The following are the cases referred to in the Secretariat note as being contrary to the view already taken by the Government and communicated to the Residency in Law Secretary's letter No.Pol:1016/Cts. 45-29-10 dated 15th March 1930 :-

1) R. v. Voltheim cited in Russel on Crimes.
2) R. v. Nillins 53 L.J.(M.C.) 157.
3) R. v. Godfrey (1923) 1 K.B.24.
4) R. v. Oliphant 2 K.B.67.
5) R. v. Taylor.
6) I.L.R. 36 Bom.524.
7) A.I.R. 1928 Sindh 161.
& 8) Halsbury's Laws of England Vol.9, page 272.

All the above decisions proceed upon the statutory definition of the expression "Fugitive Criminal" in section 26 of the Extradition Act of 1870, with which we are not now concerned in the present case. In the absence of a Statutory definition of the above expression in Mysore, it has to be understood

understood in its general sense as meaning "a person committing a crime in one country and escaping into another country". This view is supported by the decision in a well-known American case, viz. State v. Hall, page 44 (1894), American State Reports 501, in which it was held that a person cannot in any sense be deemed to have fled from the justice of a State in the domain of whose terminal jurisdiction he has never been corporally present, and that one who has never fled cannot be a fugitive from the justice of a State in which he is only constructively present at the time of the commission of the crime. This case is referred to with approval by Clarke in his treatise on Extradition at page 263.

(b) That in Mysore as well as in British India the expression "fugitive" has been understood to mean a person escaping from one country to another is clear from the wording of section 58-A of the Mysore Criminal Procedure Code as amended by Regulation II of 1933 wherein the term "fugitive" is used. The said section runs as follows :-

> "A pursuing party may, subject to the provisions hereinafter contained, continue the pursuit into, and arrest the fugitive in Mysore."

(c) Again, the phraseology employed in Clause 56 of the Madras Manual of Procedure relating to extradition also points to the same conclusion. Clause 56 of the said Manual says :- "The arrangement in force for obtaining the arrest and return of offenders escaping from British India into Mysore

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date from the time when Mysore was administered by a Chief Commissioner. I am therefore of opinion - that the above decisions cannot be said to be relevant for the purposes of the present case.

(d) A detailed examination of the above cases relied upon in the Secretariat note (Nos.1 to 7) goes to show that all of them relate either to - extraditable offences, or political offences of a serious nature. Moreover, the question of the - surrender of an accused for an alleged libel in a newspaper against a private individual did not arise for decision in any of those cases, and hence they cannot be cited as authorities on such a question.

(e) As regards the cases referred to in - Halsbury's Laws of England (Vol: IX, page 272)(No.8) it has to be observed that there is nothing to show that the offenders in the said cases were foreigners and the case of a man sending by post a libellous or obscene publication has been omitted in the New Edition of Halsbury's Laws of England (See Vol: IX, page 57).

(f) Again, according to Russel on Crimes (page 57) "the prevailing opinion in England and the United States is that a person who, when abroad, is concerned in directing a crime, may be punished for the same <u>if arrested or found where the crime was committed.</u>

(g) The following observation is found in the latest edition of Ratanlal's "Law of Crimes" (1933) at page 37 :-

"It

"It is only for acts done when the person doing them is within the territory over which the authority of the British law extends, that the subjects of a foreign State owe obedience to that law and can be made amenable to its jurisdiction. Thus, when it is sought to punish a person, who is not a British subject, as an offender in respect of a certain act, the question is not 'where was the act committed', but 'was the person at the time, when the act was done, within the territory of British India'. For if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender; and he is, therefore, not subject to the jurisdiction of Criminal Courts."

"Per Plowden, J., in Mussummat Kishen Kour, (1878) P.R.No.20 of 1878."

(h) The view taken by Government is supported by the famous case of R. v. Keyn (often called the "Franconia" case). The facts were briefly as follows :-

2 Ex. D. 63.

Keyn was in command of the "Franconia" a German ship, on a voyage from Hamberg to St. Thomas. When within two and a half miles from the beach of Dover, and less than two miles from the head of the Admiralty Pier, the Franconia, by the negligence (as the jury found) of the prisoner, ran into the British ship Strathclyde, sank her, and caused the death of

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one of her passengers. Keyn was tried for manslaughter and convicted at the Central Criminal Court, and the question was whether he had committed any offence within the jurisdiction of the admiral of England. The case was twice argued, once before six, and again before fourteen judges, on seven different days. Of the fourteen judges one (Mr. Justice Archibald) died before judgment was delivered, and of the remaining thirteen judges seven were of opinion that the conviction must be quashed.

This is a decision of great authority and in the opinion of Sir James Stephen, "it deserves careful study, not only on account of the extraordinary profusion of learning and interesting arguments which it contains but also of several questions of great interest which it illustrates."

As admitted in paras 4 and 5 of the Secretariat Note, the Law Secretary's legal opinion was based on the principles laid down in the above case. It is worthy of note that the above decision (R. v. Keyn) has neither been referred to nor overruled in any of the cases mentioned in the Secretariat note, and a decision of such great authority and outstanding merit cannot certainly be lightly disregarded, especially when it has not been overruled. **

** It may be of interest to add that this case has been quoted as a great authority on the question of jurisdiction in the latest edition of Archibold's "Criminal Pleading" (28th Edition of 1931 at page 32), and also in two recent English decisions reported in 1932 K.B.D. Vol.II at pages 205 and 244.

II. Apart from the question of the Gadag Magistrate's want of jurisdiction to try the case, there is a stronger ground of objection against the demand of the Residency for the surrender of the Mysore subject, and since the Residency has asked the Government for a re-consideration, I think the

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latter ground may now be urged with advantage in answer to the said demand.

The terms of the Chief Commissioner's Notification No.111 are as follows :-

> "Under the authority of His Excellency the Viceroy and Governor General in Council, the Chief Commissioner directs that all criminal processes of whatever description, when issued by any Magistrate having jurisdiction in any District of British India, shall be acted upon and executed by all Magistrates and Police Officers in Mysore, under the same conditions, and in the same manner, as if such process had been issued by a Magistrate having jurisdiction in Mysore."

(1) The words "when issued by any Magistrate <u>having jurisdiction</u>" in the above Notification have to be interpreted to mean as <u>having jurisdiction not only to try the case but also to issue the warrant.</u> A brief examination of the Statutory powers possesse by the Magistrate of Gadag will show that he is not legally competent to issue the warrant for execution outside the limits of British India.

The warrant in question has been issued by the Gadag Magistrate under the Criminal Procedure Code. There is no provision in that Code enabling a Magistrate in British India to issue a warrant of arrest to be executed outside the limits of British India. The territorial operation of the British

Indian

Indian Criminal Procedure Code is limited only to British India as can be seen from Section 1, sub-para (2) of the said Code. Section 82 of the Criminal Procedure Code provides that a warrant of arrest may be executed at any place in British India This gives rise to a necessary implication that it cannot be executed outside British India, and the Privy Council decision reported in I.L.R.25 Calcutta page 20 (Mahommed Usuffudin v. Queen Empress) is an authority in support of this proposition. In that case, the alleged offence was committed at Simla and was triable there and a warrant of arrest issued by the Simla Magistrate was executed against the accuse a native of the Nizam State in the territory belonging to the Nizam of Hyderabad and in respect of which jurisdiction required for railway purposes had been conceded by the Nizam in favour of the British Government. It was held by Lord Halsbury (Lord Chancellor) that the arrest was illegal. This decision has been followed in Radha Kishan v. Crown (1920), 1 Lahore, page 406. In that case, the accused was arrested at the Railway Station at Gwaliar by the Railway Police in pursuance of a telegram sent by the District Magistrate of Montgomery in the Punjab for an offence under Section 161, I.P.C., alleged to have been committed in the Montgomery District, and it was held that the arrest was illegal In both these decisions, it was held that the warrants issued by the Magistrates in British India were without jurisdiction and consequently null and void.

In the latest edition of Prinsep's Criminal Procedure Code it is pointed out that if it is desired to arrest a person out of British India and

in a Native State, the matter should be dealt with under the Indian Extradition Act (Act XV of 1903).

"Prinsep's Criminal Procedure Code, 1933, at page 73."

(2) All commentators are agreed that under Section 82 of the Cr.P.C., a Magistrate in British India is not competent to issue a warrant of arrest for execution outside the limits of British India.

See: (1) Woodroffe on Criminal Procedure Code (1926) page 67.
(2) Sohoni's Criminal Procedure Code (1931) page 117.
(3) Roy's Criminal Procedure Code (1932) page 78.
(4) Prinsep's Criminal Procedure Code (1933) page 73.

(3) That a Magistrate of a British Indian Court has no authority to direct the arrest of a person residing at any place beyond British India is a proposition which does not admit of any dispute whatever, and the provision of Section 82, Cr.P.C., which restricts his authority to order the arrest of persons only within the limits of British India, is based on the fundamental maxim that the Legislature does not intend to exceed its jurisdiction. Primarily, the legislation of a country is territorial. The general rule is extra territorium jus decenti impune non paretur; legis extra territorium non obligant. The laws of a nation apply to all its subjects and to all things and acts within its territories. They apply also to all foreigners within its territories (not privileged like -- sovereigns and ambassadors) as regards criminal, police and indeed all other matters except some questions of personal status or capacity in which

by the comity of nations, the law of their own country or the lex loci actus or contractus applies.

Maxwell's Interpretation of Statutes at page 255.

(4) Even the English Parliament, though its enactments may extend to the King's subjects while they are abroad, has no power to legislate for foreigners out of the dominions and beyond the jurisdiction of the British Crown (Lopez v. Burslem, Moo.P.C.300 at page 305).

(5) "No sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions. Every exertion of authority of this sort beyond this limit is a mere nullity."

Story's Conflict of Laws (Sec.539).

(6) "The Legislature has no power over any persons except its own subjects, i.e. persons natural born subjects, or resident or whilst they are within the limits of the kingdom. The Legislature can impose no duties except on them; and when legislating for the benefit of persons, must, prima facie, be considered to mean the benefit of those who owe obedience to our laws and whose interests the Legislature is under a correlative obligation to protect."

Per Lord Wensleydale as Baron Park in Jeffrys v. Boosey, 4 H.L.R.815

(7) "Their jurisdiction is confined within their own territories and the maxim which is more than once quoted 'extra territorium jus decenti impune paretur' would be applicable to such a case. All crime is local. The jurisdiction over the crime

belongs

belongs to the country where the crime is committed and except over her own subjects Her Majesty and the Imperial Legislature have no power whatever."

Per Lord Halsbury, L.C., in Macleod v. Attorney General for New South Wales (1891 Appeal Cases 455).

(8) "The power of this country is to legislate for its subjects all the world over and as to foreigners within its jurisdiction but no further.

Dr. Lushington in Zollverein cited in R. v. Keyn.

(9) "I take it the limitation is this, that all laws of the English Parliament must be territorial -- territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation of them, and also all aliens who come to this country, and who, during the time they are here, do any act which on a fair interpretation of the statutes guards them, comes within its provisions. Of course, it is not necessary that a person to be subjected to an English Act should be domiciled here. If he is a resident here temporarily and does an act which comes within an intent and purview of a statute, he, as regards that statute, as does every alien who comes here in regard to the laws of this realm, submits himself to the law, and must be dealt with accordingly. * * * * <u>But as regards foreigners, there is, prima facie, no right to bind them if they are not here.</u>"

Per Cotton, L.J., in Exparte Blain, 12 Ch. Dn. 522 cited with approval by Lopez, L.J., in Exparte Pearson (2 Q.B.263).

III.

III. In connection with the question of jurisdiction, the following principles also seem to deserve consideration :-

(1) "No foreigner can be liable to trial or punishment under British Law for any offence committed by him on land outside the dominions or protectorates of the Crown even though the act committed by him takes effect in the British territory."

Russel on Crimes, page 27.

(2) "I can find no authority for saying that a State has any jurisdiction to punish a foreigner who at the time of the commission of the offence was not within the territory and consequently not, owing it any allegiance."

Amphlett, J.A. at page 119 in
R. v. Keyn (2 Ex. page 63).

(3) "According to the general law therefore, a foreigner who is not residing permanently or temporarily in British territory or on board a British ship, cannot be held responsible for an infraction of the law of this country. Unless, therefore, the accused, Keyn, at the time of the offence of which he has been convicted was committed, was on British territory or on board a British ship, he could not be properly brought to trial under English law, in the absence of express legislation."

Cockburn, C.J., at page 161 in
R. v. Keyn.

(4) "According to the doctrine of Lord Coke in Calvins case, protection and allegiance are - correlative: it is only where protection is afforded by the law that the obligation of allegiance to the law arises; or, as I prefer to put it, it is only for acts done when the person doing them is within the area over which the authority of British Law extends, that the subject of a foreign State - owes obedience to that law or can be made amenable to its jurisdiction."

R. v. Keyn at page 236.

(5) It is well settled that it is sovereignty and dominion that necessarily give or import jurisdiction. In other words, a Court established in a particular country can claim to try a person only if he owes allegiance to the sovereign of that country or if he is residing in that country either permanently or temporarily, or if he at least comes into that country for however short a time and thus temporarily places himself under the protection of the sovereign of that country.

It therefore seems to be clear, according to the express terms of Section 82 of the Criminal Procedure Code, as well as the recognised principles of English Law, that the Magistrate of Gadag in British India is not legally competent to issue the warrant for execution outside the limits of British India, and that his warrant is accordingly illegal and without jurisdiction.

IV (a) In this connection, it may be useful to consider the exact legal effect of the Chief Commissioner's Notification of 1878 with respect to the

warrant

warrant issued by the Gadag Magistrate, which, as has already been observed, is evidently without jurisdiction. The Chief Commissioner's Notification of 1878 cannot be held to supply this defect and authorise the Magistrate of a British Indian Court to issue a process outside the limits of British India when the Legislature itself has not thought fit to authorise him to do so. From the mere fact that the said Notification is in force in Mysore, it cannot be validly contended that it can confer such jurisdiction upon courts in British India and validate a warrant which is ab initio null and void. It has also to be remembered that the Chief Commissioner who was administering the Mysore State in 1878, could only issue a Notification to be in force within the said State and that he was not competent to confer upon courts in British India any jurisdiction to issue warrants for execution outside British India.

(b) Nor can it be contended that the Courts in Mysore are not competent to examine the validity or otherwise of the warrants issued by Magistrates in British India merely by virtue of the Notification being in force in the Mysore State. It is worthy of note that on the same day the same Chief Commissioner issued another Notification, viz., No.112 requiring that all decrees of any court established in British India, which cannot be executed within the jurisdiction of the court by which they were made, may be executed in the manner provided by Sections 223 to 228 of the Criminal Procedure Code within the jurisdiction of any court in Mysore. But it is common knowledge that Civil Courts in Mysore

are refusing to execute such decrees passed in absentem against non-resident foreigners on the ground that they are decrees passed without jurisdiction and therefore null and void.

See the leading Privy Council case of
Gurudayal vs. Raja Faridkot
22 Calcutta, page 222;

27 Madras Law Journal, page 535;

40 Bombay, page 551;

20 Mysore Chief Court Reports, page 214;

22 Mysore Chief Court Reports, page 186;

23 Mysore Chief Court Reports, page 299;

and 29 Mysore Chief Court Reports, page 143.

If the existence of the Chief Commissioner's Notification (No.112) of the same date as No.111 of 1878 cannot disqualify Civil Courts from examining questions of jurisdiction of the British Indian courts regarding the execution of decrees passed by them, and if it is open to a defendant to contest in the Mysore courts that a decree passed against him in a foreign court is a nullity on the principles of international law, how can it be said that it is not open to an accused against whom a foreign court issues a warrant of arrest to contend on the same principles of international law that the said warrant is illegal and without jurisdiction?

V. The view taken by the Residency that the Chief Commissioner's Notification does not admit of any limitation as to its nature and scope, is based on the opinion of Mr. Moss King that the Notification is clear and free from all ambiguities (vide. Mr. Moss King's letter dated 24-3-1906). But it is difficult to accept this opinion as correct.

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In the Chief Commissioner's Notification the words "all criminal processes of whatever description", and the words "any Magistrate having jurisdiction in any District in British India", are important and require careful examination.

(1) The expression "jurisdiction" in the above Notification cannot be said to be free from ambiguity, and according to recognised canons of interpretation, the expression means jurisdiction to give the particular direction embodied in the process to be executed and not merely jurisdiction to try the case. As observed by Hawkins, J. in Queen v. Hughes (4 Q.B.D. page 614 at page 624), "there is a marked distinction between the jurisdiction to take cognisance of an offence and the jurisdiction to issue a particular process to compel the accused to answer it. The former may exist; the latter may be wanting." It has also to be observed that jurisdiction to issue a process against a person is one that can only be derived from a statute. A court taking cognisance of a crime has no inherent power, apart from the statute, to issue a process.

(2) It is a well known rule of interpretation that whenever the language of the Legislature admits of two constructions and, if construed in one way, would lead to obvious illegality or injustice, the courts have to act upon the view that such a result could not have been intended, unless the intention has been manifested in express words.

(Vide. Maxwell's Interpretation of Statutes, page 356).

In the present case, the expression "jurisdiction"

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in the Chief Commissioner's Notification has to be interpreted as jurisdiction also to give the particular direction embodied in the process to be executed, since a contrary interpretation would lead to an obvious illegality.

(3) Again, the words "all criminal processes of whatever description" in the Notification are very general, and it cannot be said that they are free from ambiguity. The expression "all criminal processes" cannot be held to include illegal processes as well, since such an interpretation is likely to lead to undesirable results and injustice. The mode of interpretation must be in favour of the subject, and this view is supported by the following observation of Lord Abinger :-

> "The interpretation of Statutes has always, in modern times, been highly favourable to the personal liberty of the subject, and I hope will always remain so."
>
> Lord Abinger in Henderson vs. Sherborne 150 E.R.743.

(4) The view expressed by the Residency, that the correspondence which led to the issue of the Notification need not be examined for ascertaining the nature and scope of the Notification, is directly opposed to the decision of the Privy Council in 25 Cal.20. In that case, for the purpose of ascertaining the nature and extent of the "full jurisdiction" conceded, reference was made to the correspondence which had taken place between the Government of India and the Nizam, and it was held that, on the true construction of the correspondence, the jurisdiction conceded must be limited to the jurisdiction required for railway purposes, and that consequently

the execution of the warrant was illegal. It is important to observe that in the above case the expression "full jurisdiction", like the words "all criminal processes of whatever description", was quite general. It was held that the said expression viz. "full jurisdiction" had only a limited meaning, and this decision is a sufficient answer to the contention raised in para 2 of the Residency letter.

(5) Again, expressions similar to the expression "whatsoever", found in the Chief Commissioner's Notification, have also received judicial interpretation in decided cases. In Mcleod vs. Attorney General for New South Wales (1891), Appeal Cases 455, the provisions of Section 54 of the Criminal Law Amendment Act of 1883 formed the subject of judicial interpretation. The said section ran as follows :--

> "Whosoever being married marries another person during the life of former husband or wife, wheresoever such second marriage takes place, shall be liable to penal servitude for seven years".

It was held that the words "whosoever" and "wheresoever" in the above section had only a limited meaning and must be intended to apply only to those actually within the jurisdiction of the Legislature and that consequently there was no jurisdiction in the Colony to try the accused for the offence of bigamy alleged to have been committed in the United States of America. Applying the above principles to the present case, the expression "all processes of whatsoever description" must therefore be deemed to apply only to those processes issued by a court competent to issue such processes.

(6) Again, para 13 of letter No.84 J. dated 25-6-1878 from the Under Secretary to the Government of India, Foreign Department, to the Chief Commissioner of Mysore, on the authority of which the Chief Commissioner issued Notification No.111 dated 23rd July 1878, goes to show that the said Notification can only ~~be~~ apply to processes issued in connection with offences included in the Schedule to Act XI of 1872 corresponding to the present Extradition Act XV of 1903. This view receives considerable support from the following clause appearing in the Proviso to Section 188, Criminal Procedure Code :-

> "Where it is an offence for which extradition can be demanded by the British Government."

If the Chief Commissioner's Notification were intended to apply to all kinds of offences, and not merely to extraditable offences mentioned in the Schedule to Act XV of 1903, it would mean that extradition could be demanded by the British Indian Courts in respect of every conceivable offence committed in British India, including cases of common assault and even Municipal offences. In that event the clause "where it is an offence for which extradition can be demanded by the British Government" in Section 188, Criminal Procedure Code, would be superfluous. It may also be added that the Code of Criminal Procedure that is in force in Mysore has received the assent of the Governor-General-in-Council and is one of the enactments that find a place in the Instrument of Transfer, just as the Chief Commissioner's Notification No.111 of 1878.

(7) In this view of the case it is difficult to agree with the opinion expressed by the Residency, and it is quite open to the Government to examine the correspondence and the circumstances which led to the issue of the Notification in order to ascertain the exact scope of the processes referred to therein. The said correspondence unmistakably suggests that the Notification in question was intended to apply only to fugitive offenders escaping from British India into Mysore. That in practice the Notification is made applicable only to such fugitive offenders is very clear from paras 56 and 57 of part I of "Instructions for the guidance of Magistrates and Police Officers" printed at page 19 of the "Madras Manual of Procedure relating to Extradition" (published by authority), 2nd Edition of 1911. Clause 56 of the said Instructions says that "the arrangements in force for obtaining the arrest and return of offenders escaping from British India into Mysore date from the time when Mysore was administered by a Chief Commissioner, etc." Clause 57 further lays down that "when the surrender of a fugitive escaping to Mysore is desired, a British Magistrate may send his warrant to the Magistrate of the District or Taluk in Mysore". This authoritative interpretation is an unanswerable argument against the contention of the Residency, and though this argument has been specifically urged in para 8 of the Law Secretary's letter dated 15-3-1930, it is significant that the Residency letter is silent in this respect and that no attempt has been made to meet the above argument. In the face of these Clauses (Cl.56 and 57) contained in the Manual of the Madras Government, the authority of which may not perhaps be disputed by the Residency, which

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indicate in unmistakable language that the notification is applicable to fugitive offenders actually escaping from British India into Mysore, I do not think that it is open to the Residency to raise a different interpretation contrary to that of the Madras Government, especially when it is based on the correspondence between the said Government and the Residency (Vide. para 4 of Resident's letter in G.O. No.1542 dated 30-9-1898). Nor can it be said to be consistent for the Residency and the Madras Government to hold conflicting views on one and the same notification. If the Residency was of the opinion that the notification was intended to be unlimited in its scope including every conceivable offence under the law as held by Mr. Moss King in 1906, it is not clear why the Residency acquiesced in the restricted interpretation subsequently given to the notification in 1911 under the authority of the Madras Government. The previous opinion of Mr. Moss King (1906) must be deemed to have been superseded by the subsequent authoritative interpretation of the notification by the Madras Government according to the same canons of interpretation of Statutes relied upon by Mr. Moss King, and the Residency must be deemed to be estopped from disputing the correctness of the interpretation of the Madras Government.

VI. One of the arguments advanced by the Residency is that "where a libel is sent from one country to another the venue may be laid in either country". (Vide para 2 of the Residency letter dated 8th July 1932).

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I am afraid that this proposition is stated in very broad terms, and it is difficult to accept it as correct. This can only be true if both the countries are under the same sovereign. Venue or local jurisdiction is quite different from national or territorial jurisdiction,/and it is only where (Archibold's Criminal Pleading,p.27) the latter jurisdiction is present that the question of venue or local jurisdiction can arise. In the present case, national or territorial jurisdiction is absent since the taluq of Gadag in Dharwar District and the Mysore State are not under the same sovereign, and hence there is no force in the arguments advanced by the Residency.

In this connection, the following cases may be usefully referred to in support of the above view:

(1) R. v. John Lewis, 1 Dears & Bell 182 is a case in support of the position that a foreigner committing an act in a foreign territory could not be tried at the place where the consequence ensued. That was a case of manslaughter. The prisoner and the deceased were foreigners and the latter died at Liverpool from injuries inflicted by the prisoner on board a foreign ship on the high seas. It was held that the offence was not cognizable by English Courts and that the prisoner could not be convicted.

(2) It is also relevant to advert here to the following pertinent passage in the judgment of Cockburn C.J. in Queen v. Keyn, L.R. 2 Exchequer 63 at page 236 :- 'I cannot think that if two ships of different nations met on the ocean, and a person on board of one of them were killed or wounded by a shot fired from the other, the person firing it would be amenable to the law of ship in which the

shot took effect.' That observation of Cockburn,C.J. applies exactly to the present case in which instead of the two ships we have two territories viz. British India and Mysore and the posting of the copy of the newspaper from Mysore to Gadag takes the place of the firing of the shot from the one ship to the other.

(3) In Reg. v. Pirtai 10 Bom. H.C.R. 356 where a foreign subject resident in foreign territory - instigated the commission of an offence which in consequence was committed in British ~~India~~ territory it was held that the instigation not having taken place in any district created by the British Indian Criminal Procedure Code, the instigator was not - amenable to the jurisdiction of a British Indian Court established under that Code.

(4) In Balawant Singh v. Emperor, 48 Indian Cases 465, where a subject of a Native State was charged with abetting an offence committed in British India and the alleged abetment consisted entirely of what the accused did or said at a plce within the State territory, it was held that he could not be tried in a Court in British India for such abetment.

(5) Siddha v. Biligiri (7 Mad. 354) was a case under the Breach of Contract Act. In that case - Siddha advanced Rs.12/- to the accused Biligiri and the latter promised to go and work on Helen Estate in Wynad from June 1883 to March 1884. That contract was entered into in Mysore. The accused having - broken his contract a warrant was issued by the Honorary Magistrate, South East Wynad to the Amildar

of

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of Chamarajnagar Taluk in Mysore to arrest and produce Biligiri before the Sub Magistrate of Gudalur. The accused was arrested in Mysore and taken to Wynad for trial. It was held by the Madras High Court that Wynad Court had no jurisdiction.

(6) I may also just refer here to the case reported in 8 Bombay Law Reporter 513. In that case the complainant was assaulted by the accused within the Baroda territory, and his leg was completely broken in that territory. He was brought into a hospital within the British territory in consequence of this injury, where he was detained for 57 days, during which period he was unable to follow his ordinary pursuits. He filed a complaint for grievous hurt in a British Court. The Magistrate sought to obtain the certificate from the Political Agent at Baroda, as required by Section 188 of the Criminal Procedure Code. On his failing to obtain it he ordered the papers in the case to be filed under Section 203 of the Criminal Procedure Code. The complainant thereupon applied to the High Court contending that the Magistrate ought to have proceeded with the trial under Section 179 of the Code. It was held that the Section 179 of the Criminal Procedure Code did not apply, since the injury that was done, viz., the fracture of the leg, was complete within the Baroda territory. Just as in 8 Bombay Law Reporter Case, in the present case also the alleged offence of defamation was complete within the Mysore State even before the copy addressed to Gadag was posted, because the Editor Pandit Gurushanta Sastry published the alleged libel when he gave the manuscript for print and the printer and the proof-reader came to know of its contents.

VII (a) The arguments of the Residency to claim an unlimited scope for the Chief Commissioner's Notification of 1878 are violently opposed to the whole spirit and policy of the law of extradition. There is abundant authority for the proposition that extradition should be confined only to offences of a serious character.

(1) Clarke makes the following observations on this point while criticising the provisions of The Extradition Act of 1873 :-

> "It should be remembered that extradition cannot safely be allowed to become a matter of ordinary police. A person who is found living in Great Britain is <u>prima facie</u> entitled to the protection of her laws, and should not be delivered over to a foreign jurisdiction except upon a serious charge, and after strict precautions taken against injustice being done. The Act of 1873 so - extends the schedule of crimes that a treaty might now be made and put in force, under which persons should be surrendered for doing wilful - damage to a tree or for boxing a boy's ears in the street. Of course, it is not likely that such a treaty will be made, but there was no - occasion to pass an Act of Parliament to make such a folly possible."
>
> (Pages 256 - 257.)

(2) While speaking of the terms of the Ashburton Treaty of 1842, President Tyler informed the Senate as follows :-

> "The article on the subject of extradition in the proposed treaty is - carefully confined to such offences as all mankind agree to regard as heinous, and destructive to the security of life and property."

Clarke on Extradition, page 51.

It is therefore clear that the right to claim an unlimited scope for the notification so as to include every conceivable offence within its purview is untenable and opposed to recognised principles of the law of extradition and cannot be conceded.

(b) It must also not be forgotten that libel is essentially a personal wrong, and under English law no criminal proceedings can be instituted by the aggrieved party unless the words are clearly of a kind calculated to provoke a breach of the peace. If he does so, the Judge will direct the Jury to throw out the bill of indictment and leave him to pursue his civil remedy.

1) Gatley on Libel and Slander, pages 9 - 10.

2) Odgers on Libel, pages 368-369.

> "Private character should be vindicated by civil proceedings, and indictment for libel ought to be reserved for

cases

cases in which there is a serious offence committed, an offence of such enormity as might tend to - bring about a breach of the peace or disturb the harmony of the community."

"No criminal prosecution by way of - indictment shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for any libel published therein without the preliminary order of a Judge at chambers."

"A Judge at chambers will make no such order unless he is satisfied that the case is one which will not be met by a civil action."

Fraser on Libel and Slander,
pages 326, 347 & 348.

The above authorities lead to the irresistible conclusion that the demand for surrender pressed by the Residency underlies a proposition which is unknown to law. A libel cannot be deemed to be either an extraditable or heinous offence so as to justify the demand, and it is difficult to find a single case either in England or India in which an accused editor has been surrendered for an alleged offence against a private individual.

III(a) The Residency seems to stress the fact that the Chief Commissioner's Notification has been -

included

included in the Mysore Treaty and that it has got the force of law. It is true that it has been embodied in the Instrument of Transfer of 1881 - (Art.16) and the Mysore Treaty of 1913 (Art.15). But considering the importance of the legal and constitutional issues involved, it is open to doubt whether too much reliance could be placed on the conditions embodied in the Treaty. The days are gone when people used to quietly accept whatever they were told in the name of a Treaty. They now want to question and scrutinize the treaty rights from a strictly legal stand point and ask the Courts to determine the rights and liabilities of the parties accordingly. Since the Residency has now doubted the correctness of the judicial orders - passed by a competent Magistrate of a British Indian Court which are unfavourable to their contention (vide para 4 of the Residency letter), although the said orders are to be deemed final and legally binding on the parties in the absence of an appeal or revision petition against the same, and since they claim an unlimited scope for the application of the Notification contrary to the view taken by the Madras Government in the same matter and require it to be understood in a sense never perhaps contemplated by its authors half a century ago, it seems desirable to invite the attention of the Residency to the legal implications involved in the demand which they are pressing on the Government altogether ignoring the fact that the alleged libel was published in the newspaper about five years ago. The language employed in the Instrument of Transfer -

(Art.16)

(Art.16) and the Mysore Treaty (Art.15) is of a general character. At first sight it might appear that by virtue of the said Article the arrest and surrender of any person in Mysore accused of having committed any offence in British India may be demanded. But reading the Chief Commissioner's Notification (No.111 of 1878), Article 15 of the Mysore Treaty and section 188 of the Criminal Procedure Code together, it is difficult to get over the impression that the scope of Article 15 is intended to be limited only to extraditable offences, i.e., offences mentioned in the Schedule to Act XV of 1903, and this view is supported by the opinion of Sir James Stephen who says that extradition treaties are confined to crimes of a serious character.

Stephen's History of the Criminal Law of England, Vol.II, page 68.

(b) Again, as admitted by Mr. Moss King in the Residency Letter No.1958 dated 24th March 1906, the Chief Commissioner's Notification is in force as an adjective law as it deals only with a matter of pro cedure, and it is well settled that an adjective law cannot take away the substantive rights of parties. It is a natural and substantive right of every citizen of a State to claim protection against an illegal arrest, and there is nothin in the Instrument of Transfer, or in the Mysore Treaty, or in any other Legislative enactment that is in force in Mysore to take away the inherent right of a subject of the Mysore State to test before a Court of law the validity of his arrest, or the jurisdiction of a Magistrate in British India either to

issue the process or to try the case.

(c) Judged from a legal point of view, a treaty is nothing more than a contract between two nations or States, and it is not a Legislative Act. Hence, Courts of law either in British India or in Mysore cannot perhaps rely on the terms of the treaty in support of any action to be taken by them, unless the terms of the treaty are incorporated in a Legislative enactment so as to be binding on them. This view is supported by the following observation of Lord Herschell in the well-known case of Walker v. Baird (1892) A.C.491 at page 497 :-

> "The learned Attorney General, who argued the case before their Lordships on behalf of the appellant conceded that he could not maintain the proposition that the Crown could sanction an invasion by its Officers of the rights of private individuals whenever it was necessary in order to compel obedience to the provisions of a treaty."

Speaking of the Ashburton Treaty of 1842 Clarke, in his book on Extradition, says as follows at page 38 :-

> "In England the common law being held not to permit the surrender of a criminal, this provision could not come into effect without an Act of Parliament."

Archibold, the well-known author of "Criminal Pleading", is also of opinion that a Treaty has no binding effect until confirmed by Statute.

Archibold's Criminal Pleading (1931)
page 428.

(d) The legal and constitutional aspects of the question are of very great importance and seem to

deserve

deserve careful examination. In a constitutional and enlightened Government worked on modern lines and inspited with English conceptions of law and justice, no one can lawfully be restrained or punished except for a violation of the law established to the satisfaction of a Judge or Magistrate in proceedings regularly instituted in one of the ordinary Courts of justice. The right of personal liberty is the right not to be arrested or detained or otherwise subjected to physical restraint except in accordance with the law, and it is only the result of the application of the fundamental principle above referred to.

Again, no one who is charged with a violation of the law can effectively plead, either in a civil or a criminal Court, that his act was done in obedience to the command of a superior, even the command of the King himself. According to Lord Hewart, Chief Justice of England, the maxim that "the King can do no wrong", imports not only that the King cannot be proceeded against for any alleged wrong, but also that he cannot authorise any wrongful act so as to justify the wrong-doer. Hence, every subject is entitled to approach a Court of law for protection against his illegal arrest, and it is open to doubt whether the terms of a treaty which has received no statutory recognition could be relied upon in justification of such arrest.

IX (1) Moreover, the question is also not free from practical difficulties. The arrest and

surrender

surrender of a Mysore subject contemplated under Article 15 of the Mysore Treaty could only be effected by means of an executive order of the Government. If the person to be arrested resists the arrest on the ground that he is not liable to be arrested and uses force to escape from custody, the important question then arises whether he could be prosecuted for those acts. If he is prosecuted it would be open to him to defend himself by questioning the legality of his arrest. It would then be the duty of the prosecution in such a case to find justification for the arrest. It may not be justifiable on the ground of "Act of State" or perhaps even under the terms of the Treaty, and it may lead to embarassing situations.

(Vide Walker v. Baird), 1892 A.C. p.491.

(2) According to the opinion of the Privy Council in a very recent decision, the Government of India could not by an executive act confiscate the property of a subject (Chaturbhuj Piramal V. Chaturbhuj Piramal Allahabad Law Journal dated 21st July 1933, page 629 at page 636), and it is equally well understood that a subject cannot be arrested on the authority of an executive order. Again, there can be no such thing as an "Act of State" between a sovereign and a subject. In this connection, it may be relevant to quote the following observation of Sir James Stephen in his history of the Criminal Law :-

> "As between the sovereign and his subjects there can be no such thing as an "Act of State". Courts of law are established for the express purpose of limiting public authority

authority in its conduct towards individuals. If one British subject puts another to death by the express command of the King, that command is no protection to the person who executes it, unless it is in itself lawful and it is the duty of the proper Courts of Justice to determine whether it is lawful or not."

(Stephens History of the Criminal Law Vol: II page 65).

(3) Similar observations are to be found in the following cases :-

1) 5 Appeal Cases 102

& 2) 13 W.R. (P.C.), page 4.

X. There is another strong circumstance to hold that the warrant in question is not executable The question of arresting the accused has to be dropped in the light of the final order passed in the case by the First Class Magistrate, Gadag, on 7-1-1931 of which the Residency is probably not aware. In that order the Magistrate himself - clearly says that offences under Sections 500, 501 and 502, I.P.C., are not extraditable offences and no warrant of arrest could be issued for the - surrender of the accused and that the warrants - that have been issued are contrary to law. When by virtue of such final order of the Magistrate,

the

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the correctness of which has not at all been questioned by the party concerned (the complainant), the case itself is struck off the file, the warrant issued by that Court for the arrest of the accused can no longer be said to be in force.

XI (a) The issue of the warrant is also opposed to the Standing orders of the Government of India on the subject, and this view is -- supported by the following passage appearing on page xxxi in Appendix II of Sohoni's Code of Criminal Procedure:--

> "Act XV of 1903 does not profess to deal with the matter of requisitions for the surrender of criminals who have fled from justice out of British India into a -- Native State, but with the converse. The standing order on the subject by the -- Government of India is that "where such a demand is made it should be by our Magistrates, not to the State direct, but through the Political Officer; and the demand should invariably be accompanied by a copy of any depositions made, or where no evidence has yet been taken, by a -- statement of the information on which the arrest of the offender is deemed necessary. It should rest with the Political Agent if necessary, to call on the Magistrate for further information, but if the -- Political Agent possesses the influence and weight he ought to have, he will -- seldom fail to obtain compliance with any

reasonable

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reasonable demand made to the Durbar to -- which he is accredited for the surrender of an absconded criminal. As to what is a 'reasonable demand' the Government of India state that it certainly includes the case of all offences (Vide Schedule 1 of Act XV of 1903) for which the arrest and removal of criminals escaping into British India is allowed; and that some cases outside of that catalogue may probably be added with -- propriety. Such instances, however, would be exceptional and the requisitions for surrender should not be made without the sanction of the Governor-in-Council, where the offence is not one of those mentioned in the Schedule above cited, or where the -- Political Agent doubts the reasonableness of the grounds of the requisition, and the -- Magistrate of the District continues to press it." (Government Order dated 12th April 1875, No.219, Political).

(b) The policy of the Government of India, as laid down in the above Government Order is that the demand to be made must be a "reasonable -- demand." As to what is a "reasonable demand", the Government of India concede that its interpretation should be restricted to the cases of -- offences included in the Schedule to the Indian Extradition Act XV of 1903. As regards cases of offences which are excluded from the said -- Schedule, the Government of India have indicated that the policy to be followed by the British

Indian

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Indian Courts should be to confine the "reasonable demands" only to instances of an exceptional -- character and they have laid down the further condition that requisitions should not be made without the sanction of the Governor-in-Council where the alleged offence cannot be brought within the -- Schedule above referred to. "Defamation" is not included in the Schedule to Act XV of 1903, and since it is not an offence of an "exceptional -- character", the demand with respect to such an offence cannot be said to be a "reasonable demand" within the meaning of the standing order of the Government of India. Nor has libel been considered in any country at any time to be an offence for which a surrender could be demanded, especially when the alleged libel is said to be contained in articles contributed by correspondents to a newspaper printed and published by a foreigner in his own country. If the above standing order of the Government of India is held to be binding on -- Magistrates in British India, the Gadag Magistrate should have obtained the sanction of the Governor-in-Council before issuing the warrant. Since no such sanction has been obtained the warrant is opposed to the instructions of the Government of India and cannot be said to be executable for -- obvious reasons.

XII. Lastly, it is not in consonance with recognised notions of justice to arrest an accused person and subject him to a trial after the lapse

of

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of such a length of time, for no fault of his, from the date of the alleged publication of the libel (September 1928), when all traces of evidence in support of his defence may have possibly disappeared. The idea of punishing offenders after lapse of time is opposed to English conceptions of law and justice, and the following pertinent observations on this subject contained in "The Journal of Comparative Legislation and International Law", Third Series, Vol.XV, Part I, -- page 79 (February 1933) may be usefully referred to:--

> "There are many objections to punishing persons long after the commission of the offence - at any rate where the offender has not withdrawn himself from justice. The party may be deprived of the means of vindicating his innocence or of proving the attendant circumstances of extenuation. The crime may be forgotten or a mere matter of tradition. The offender may have -- become a different moral being. The -- punishment has lost its efficacy for the purpose of example. Judges and Juries are therefore in such circumstances reluctant to convict."

On this point, Clarke observes that "the -- pursuit of a fugitive three years after the -- alleged offence looks rather like revenge than justice".

Clarke on Extradition, page 257.

Under

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Under these circumstances, I think the Government may again press the above aspects of the question upon the Residency and point out the inadvisability of demanding the surrender of the accused in the present case, and may perhaps have a reference made to the Government of India in case the Residency is not agreeable to drop the matter.

Mahadevayya

Pol. 142/Mb 21-32-52

To

29-8-34.

The Secretary to
the Hon'ble the Resident in Mysore,
Bangalore.

Sir,

I am directed to refer to your letter No. 4498/203 - 28 dated the 8th July 1932 requesting a reconsideration of the views of the Government of Mysore expressed in Mr. Mahadevayya's letter No. Pol. 1016/Cts. 45-29-10 dated the 15th March 1930 regarding the execution of the warrant issued by the First Class Magistrate of Gadag against Pandit Guru Shanta Sastri, in a case of alleged defamation.

The Government of Mysore have again considered the question in the light of the observations contained in your letter and they have been unable to see any reason for revising their views in the matter.

The question whether, and if so how far, a British Indian Magistrate has power to issue a warrant for the arrest of a person in Mysore is one of considerable doubt and difficulty. As already intimated to you in Mr. Madhava Rao's letter No. Pol 973 dated 10th April 1933, the point was raised in Cr. R.P. No. 192 of 1932-33 before the Mysore High Court and the Full Bench of the High Court in their judgment which was ~~passed~~ pronounced in May last have held that a British Indian Magistrate was not legally competent to issue a warrant for execution outside the limits of British India and that his warrant ~~and~~ for execution in Mysore was illegal and without jurisdiction. The High

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Mysore High Court is also of the opinion that the operation of the Chief Commissioner's Notification of 1878 does not extend to ~~cases~~ offences other than extraditable offences. The Government of Mysore have ~~also~~ introduced an Extradition Bill in the Mysore Legislative Council at its ~~June~~ Session in order to regulate the procedure ~~adopted~~ for the surrender and extradition of criminals from Mysore to other States and British India.

As regards the jurisdiction of the Gadag Magistrate to try a case of defamation against a subject of His Highness the Maharaja of Mysore, I am to point out that the view expressed in para 11 of Mr. Mahadevayya's letter of 15th March 1930 that the Court has no jurisdiction because at the time of the alleged publication, the accused, admittedly a foreigner, was not anywhere within British India, is based on high authority.

Apart from these legal considerations, I am to say that the question has a political aspect, also Here the circumstances that led up to the issue of the Chief Commissioner's Notification of 1878 have an important bearing on the question. The notification itself is no law for the British Indian Magistrate and consequently does not prescribe when and in what circumstances such Magistrate can issue processes for execution in Mysore. The Notification only obliges the Mysore Police and Magistracy to execute the processes so issued. This cannot prevent the Government of Mysore from pointing out that in a specific case, such as the one under consideration, the British Indian Magistrate has contravened the terms, express or implied - of a political arrangement between the

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the Government of Mysore and the Government of India under which alone such Magistrate may claim, if at all, to issue a process for execution within Mysore.

Now such an arrangement has to be inferred from the Government of India letter No. 84 Judl. dated the 25th June 1878 which shows that what was contemplated was only the providing of a simple procedure for the surrender of persons who take refuge in Mysore after having committed an offence in British India. It is admitted in the letter that though exact reciprocity would not be attained by the arrangement, the slight advantage conferred on British Indian Courts is only one of difference in procedure and therefore of no material consequence. There was no idea of extending or otherwise interfering with the list of offences for which surrender could be claimed by both the parties. On the other hand, in para 13 of the letter, it is assumed that the list of offences specified in Schedule II of Act XI of 1872, which was the extradition Act then in force, included all offences for which the extradition of criminals between different States was thought actually necessary.

Finally, I am to state that it is learnt that the Gadag Magistrate himself has, in this very case against Pandit Gurusanta Sastri, held in his order of 7th January 1931 that the offence being ~~not~~ not an extraditable one, no warrant of arrest could be issued and that the warrants that were issued were contrary to law, and that he has therefore ordered that the papers ~~to~~ be filed and the complainant informed of the same. It is significant

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that the complainant, who is the party interested, seems to have accepted this decision and has not approached the appellate Courts in the matter. The Magistrate must therefore be deemed to be functus officio and the warrant itself has become unexecutable.

~~I am therefore directed to state that the~~ trust That
The Government of Mysore ~~consider that it is but just and equitable for~~ the Hon'ble the Resident will agree with the foregoing views and ~~to~~ point out to the authorities concerned the inadvisability of demanding the surrender of the offender in the present case, rather than ~~to~~ request the Gadag Magistrate to reissue the warrant.

I have etc

RR
28/7/34

Chief Secretary to Government.

6/7/34

6/8

9/8/34.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 8th August 4.

No. Pol. 142 9

From

R. RANGA RAO, Esq., B. A., B. L.,
Chief Secretary to the Government of His Highness the Maharaja of Mysore.

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

Sir,

I am directed to refer to your letter No.4498/203-28 dated the 8th July 1932, requesting a reconsideration of the views of the Government of Mysore expressed in Mr. Mahadevayya's letter No.Pol.1016/Cts.45-29-10 dated the 15th March 1930, regarding the execution of the warrant issued by the First Class Magistrate of Gadag against Pandit Guru Shanta Sastri, in a case of alleged defamation.

The Government of Mysore have again considered the question in the light of the observations contained in your letter and they have been unable to see any reason for revising their views in the matter.

The question whether, and if so how far, a British Indian Magistrate has power to issue a warrant for the arrest of a person in Mysore in one of considerable doubt and difficulty. As already intimated to you in Mr. Madhava-Rao's letter No.Pol.978 dated 10th April 1933, the point was raised in Cr.R.P.No.192 of 1932-33 before the Mysore High Court and the Full Bench of the High Court in their judgment which was pronounced in May last have held that

a British Indian Magistrate was not legally competent to issue a warrant for execution outside the limits of British India and that his warrant for execution in Mysore was illegal and without jurisdiction. The Mysore High Court is also of the opinion that the operation of the Chief Commissioner's Notificati of 1878 does not extend to offences other than extraditable offences. To meet the situation brought about by this decision. The Government of Mysore have introduce an Extradition Bill in the Mysore Legislative Council at its Session in June last in order to regulate the procedure for the surrender and extradition of criminals from Mysore to other States and to British India.

In the present case, as regards the jurisdiction of the Gadag Magistrate to try a case of defamation against a subject of His Highness the Maharaja of Mysore, I am to point out that the view expressed in para 11 of Mr. Mahadevayya's letter of 15th March 1930 that the Court has no jurisdiction because at the time of the alleged publication, the accused, admittedly a foreigner, was not anywhere within British India, is based on high authority.

I am to say further that the circumstances that led up to the issue of the Chief Commissioner's Notification of 1878 have an important bearing on the question. The notification itself is no law for the British Indian Magistrate and consequently does not prescribe when and in what circumstances such Magistrate can issue processes

processes for execution in Mysore. The Notification only obliges the Mysore Police and Magistracy to execute the processes so issued. This cannot prevent the Government of Mysore from pointing out that in a specific case, such as the one under consideration, the British Indian Magistrate has contravened the terms, express or implied - of a political arrangement between the Government of Mysore and the Government of India under which alone such Magistrate may claim, if at all, to issue a process for execution within Mysore.

Now such an arrangement has to be inferred from the Government of India letter No.84 Judl. dated the 25th June 1878 which shows that what was contemplated was only the providing of a simple procedure for the surrender of persons who take refuge in Mysore after having committed an offence in British India. It is admitted in the letter that though exact reciprocity would not be attained by th arrangement, the slight advantage conferred on British Indian Courts is only one of difference in procedure and therefore of no material consequence. There was no idea of extending or otherwise interfering with the list offences for which surrender could be claimed by bot parties. On the other hand, in para 13 of the lett it is assumed that the list of offences specifie Schedule II of Act XI of 1872, which was the exti Act then in force, included all offences for whi

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The Government of Mysore trust that the Hon'ble the Resident will agree with the foregoing views and point out to the authorities concerned the inadvisability of demanding the surrender of the offender in the present case, rather than request the Gadag Magistrate to - - reissue the warrant.

I have the honour to be,

S i r,

Your most obedient servant,

CHIEF SECRETARY TO GOVERNMENT.